91-490

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

ALFRED H. GREENING, JR.,

Petitioner,

vs.

HONORABLE BEN MILLER, Chief Justice, Illinois Supreme Court, et al.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Did the Illinois Supreme Court adopt a theory of inherent power which denied due process and equal protection of the law by:

(a) depriving a licensed attorney of his right to practice law without providing a hearing?

(b) refusing to provide a forum to challenge the constitutionality of its own actions?

(c) imposing a summary criminal conviction without specific findings of fact on essential elements of the offense?

(d) adopting a unique process to impose selective discipline outside the state's constitutional and statutory law and its own disciplinary procedures?

(e) prohibiting the trier of fact from making a final judgment of guilt or innocence?

PARTIES TO THE PROCEEDINGS BELOW

ALFRED H. GREENING, JR. (Greening), the Petitioner in this action, was the Respondent-Defendant in the proceedings below. The respondents, in this action, the Plaintiffs and relator below, are the Honorable Ben Miller, Chief Justice, and the Honorable William G. Clark, Honorable Thomas J. Moran, Honorable Michael A. Bilandic, Honorable James D. Heiple, Honorable Charles E. Freeman, Honorable Joseph F. Cunningham, Associate Justices of the Supreme Court of Illinois (herein referred to as the **ILLINOIS SUPREME COURT**) and James H. Bandy, John P. Clarke, David M. Hartigan, Watts C. Johnson, Eldridge T. Freeman, Carole R. Nolan and Mary T. Robinson (herein referred to as the **Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC)**), the Illinois Supreme Court's relator.*

* Greening attempted to clarify the parties' status but the Court ruled "I'm going to find that pursuant to the direction of the Supreme Court that I have no authority to determine who the parties are." (Judge Bone tran., 6/21/90, p. 14, l. 22-24)

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OPINIONS AND ORDERS BELOW

The opinions and orders sought to be reviewed are:

(a) The order of the Illinois Supreme Court filed May 29, 1991, is unreported and is reprinted in appendix A. The order found Greening guilty of indirect criminal contempt.

(b) The order of the Illinois Supreme Court filed June 25, 1991, is unreported and is reprinted in appendix B. The order reaffirmed Greening's conviction and imposed sentence.

The orders identified above are final.

STATEMENT OF JURISDICTION

This Court has statutory jurisdiction to review final judgments of the Illinois Supreme Court under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves an interpretation and application of the Fourteenth Amendment to the U.S. Constitution which provides in pertinent part:

> * * * nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person the equal protection of the laws * * *

STATEMENT OF THE CASE

Petitioner, ALFRED H. GREENING, JR., (Greening), during his annual registration with the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) raised an issue concerning revenue raised by Court rule. Rather than address that issue, the Illinois Supreme Court denied a hearing, foreclosed review and invoked summary, punitive action.

Summary Termination of License

On May 11, 1989, the ARDC notified the chief judge of the Seventh Judicial Circuit that "Attached is a list of those individuals [of which Greening was one] in your circuit who * * * have been removed from the Master Roll. [A]ny person whose name is not on the Master Roll and who practices law * * * is engaged in the unauthorized practice of law." (Letter of Jerome Larken to the Honorable John W. Russell, May 11, 1989).

On July 27, 1989, the ARDC instituted an original proceeding in the Illinois Supreme Court (M.R. 5916) to have Greening held in contempt for not paying his registration fee, but that petition was amended to suspend Greening's license instead. On August 7, 1989, the Supreme Court issued an order requiring Greening to show cause why his license to practice law should not be suspended for not paying his registration fee.[1]

On September 11, 1989, in response to the Illinois Supreme Court's order to show cause why his license should not be suspended, Greening raised due process objections and demanded a hearing on the summary termination of his proprietary right to practice law (also referred to in this petition as "*de facto* suspension").[2] At that time, Greening tendered to the Illinois Supreme Court a cashier's check in the total amount of fees and penalties then claimed to

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[1] The ARDC stipulated that "no specific conduct of Respondent was reported to the [Illinois Supreme] Court other than Respondent's failure to pay * * * with his registration." (M.R. 5916, Stipulation as to Facts and Admissability of Documents, Item 15, filed August 3, 1991)

[2] The outright suspension of one's license to practice law and the termination of the benefits of that license are legal equivalents.

be due by the Supreme Court. Contrary to its own rule which provides "* * * upon payment, the attorney shall be immediately and automatically reinstated to practice law". (S.Ct. Rule 756(e), Ill.Rev.Stat.(1989) ch.110A, par.756(e)), the Supreme Court refused to accept Greening's check. (Appendix D)[3]

Following Greening's response to the rule to show cause no hearing was afforded and no order of suspension was issued.[4]

Criminal Contempt Proceedings

On February 13, 1990, while the suspension action was pending, and following Greening's tender of payment to the Court, the ARDC filed a separate petition in M.R. 5916. The ARDC asked that Greening be held in indirect criminal contempt for the unauthorized practice of law after his name had been summarily removed from the Master Roll for failure to pay the registration fee.

On March 26, 1990, the Illinois Supreme Court ordered Greening to show cause why he should not be held in indirect criminal contempt. In his response, Greening again raised objections of denial of due process and equal pro-

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[3] Greening deposited the same check in an escrow in favor of the Illinois Supreme Court.

[4] On October 25, 1989, in an unrelated matter, the Honorable Judge Mills of the United States District Court for the Central District of Illinois, Springfield Division, in cause No. 86-3235, entered an order finding that: "On October 25, 1989, this Court contacted the clerk of the Supreme Court of Illinois to determine the current status of Attorney Greening's case. At present, Attorney Greening is entitled to practice law in Illinois and thus, pursuant to local Rule 1 he may also practice before this Court." (*Kurtz v. Scully*, USDC, C.D. Ill., 86-3235, order of Judge Mills, filed October 26, 1989, pgs. 1-2) (Appendix C)

tection under the United State Constitution and a number of State constitutional and legal issues.[5]

On May 30, 1990, the Illinois Supreme Court ordered "representatives of the ARDC" and Greening to appear before Judge David Bone (a judge who sits in a trial court of original jurisdiction, but who was ordered to sit in a unique capacity):

> " * * * on June 21, 1990, for the purpose of an evidentiary hearing in which *only* findings of fact *shall* be made on issues formed by the administrator's * * * report and the Respondent's answer * * *. The transcript of the proceedings * * * shall be filed with the Clerk of this Court."[6] (emphasis added) (Appendix E)

Thus, the Illinois Supreme Court established a unique bifurcated procedure of criminal prosecution which con-

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[5] On March 19, 1990, Greening filed a complaint with the Federal District Court, Central District of Illinois, Springfield Division, seeking equitable relief and other remedies based on the Illinois Supreme Court's denial of due process and equal protection under the U.S. Constitution. (*Greening v. Moran, et al.*, U.S.D.C. No. 90-3071, C.D.-Ill.(1990)).

[6] On June 5, 1990, Greening applied to the Federal District Court for a preliminary injunction to enjoin the ARDC from interfering with Greening's exercise of his proprietary right to practice law solely because of his failure to pay the registration fee. On June 21, 1990, the Federal District Court dismissed Greening's complaint and concomitantly dismissed his petition for a preliminary injunction. In their brief in opposition to Greening's petition for a temporary injunction filed in the Federal District Court on June 15, 1990, Defendant ARDC stated: "In his complaint, plaintiff argues that he has been deprived of due process due to the lack of a hearing. A hearing date regarding plaintiff's activities as alleged in M.R. 5916 has been set for June 21, 1990. *He will have the opportunity to raise all relevant issues in the state forum.* Now that the hearing date is set, plaintiff asks this court to enjoin the very hearing which will afford him his due process guarantees." (emphasis added)

sisted of four separate appearances before Judge Bone and one appearance before the Justices of the Supreme Court.

Prior to any proceedings, Judge Bone adopted a letter of memorandum affirming among other things: that there are no rules of procedure for the proceedings in M.R. 5916 or for those proceedings to be conducted before him pursuant to the Supreme Court's order; and, that the proceedings before him were not proceedings in his court, but original proceedings before the Supreme Court. (Letter Memorandum, addressed to Judge Bone, dated June 12, 1990, adopted June 15, 1990).

1. Judge Bone proceeding of June 21, 1990

At the first hearing, Judge Bone stated the following:

(a) That he "* * * gives special attention to the word "only" which directs the Court [Bone] to make findings of fact on issues formed." (Bone tran., 6/21/90, p. 3, l. 7-9)

(b) That the charge is indirect criminal contempt and "[t]he emphasis there is on 'criminal.' " (Bone tran., 6/21/90, p. 3, l. 12)

(c) "* * * the burden would be upon the prosecuting authority to prove guilt * * * beyond a reasonable doubt which would be *left for the Supreme Court to determine* with this Court making only findings of fact" (Emphasis added) (Bone tran. 6/21/90, p. 3, l. 21-24; p. 4, l. 1)

(d) "* * * it's *sui generis* in that there is no right to trial by jury, as directed by the Supreme Court. Supreme Court has their own reason for that determination, apparently." (Bone tran., 6/21/90, p. 4, l. 2-4)

(e) "I make these preliminary statements because that is about all I have to guide me, as I'm unaware of any rules that are applicable to these

proceedings and I have had no prior experience in these proceedings." (Bone tran., 6/21/90, p. 4, l. 6-9)

(f) That he was advised by the Chief Judge of his circuit that he construe the assignment narrowly and to do exactly what was directed by the Supreme Court and that if he needed further clarification to contact the Clerk of the Supreme Court. (Bone tran., 6/21/90, p. 5, l. 11-24)

At this first appearance, counsel for Greening questioned the improper use of funds raised by Supreme Court rule. (Bone tran., 6/21/90, p. 7, l. 21); pointed out that payment of Greening's fee was tendered and rejected (Bone tran., 6/21/90, p. 8, l. 12-16); that Greening was not afforded a hearing either before or after the *de facto* suspension of his right to practice law (Bone tran., 6/21/90, p. 8, l. 22-24; p. 9, l. 1-2); and "* * * that we do not believe that any hearing which does not look at all of the elements in this situation can be a hearing which can pass due process under the State and Federal constitutions" (Bone tran., 6/21/90, p. 9, l. 4-8). Greening's counsel also expressed concern that Judge Bone was unduly limited in his authority and that the hearing "* * * was not going to get to the real issues that created this whole situation in the first place." (Bone tran., 6/21/90, p. 9, l. 18-21).

Judge Bone was advised of the ARDC's statement in the Federal court proceedings (see footnote 6). (Bone tran., 6/21/90, p. 9, l. 9-12). The ARDC restated that "* * * the proceeding as a whole would give the Defendant an opportunity to raise all of his issues, both of fact and of law, which we believe the questions of law are better raised and better decided by the Supreme Court * * * who has original jurisdiction * * * and inherent authority to act on the law and the facts in this case." (Bone tran., 6/21/90, p. 10, l. 22-24; p. 11, l. 1-5). The ARDC re-emphasized

its position by stating: "* * * Mr. Greening would have the opportunity to raise all relevant issues in the State forum. He will be. He will raise all issues of law in the Illinois Supreme Court." (Bone tran., 6/21/90, p. 12, l. 1-3).

2. Judge Bone proceeding of August 6, 1990

At the August 6 proceeding, the ARDC presented its case in chief concerning whether Greening engaged in the unauthorized practice of law after his name was removed from the Master Roll.

3. Judge Bone proceeding of September 7, 1990

At the third proceeding Greening motioned Judge Bone to rule that the ARDC had not presented a case sufficient to prove their charge beyond a reasonable doubt. (Bone tran., 9/7/90, p. 4, l. 20-24; p. 5, l. 1-4). In Response to this motion, the Court stated:

(a) "Well, I don't know what the Supreme Court wants the Court [Bone] to consider other than facts. That's the problem." (Bone tran., 9/7/90, p. 5, l. 7-9).

(b) "I think this is a question of law that the Supreme Court must decide. And, pursuant to the direction given to this Court by the Supreme Court, it would be beyond the authority of this Court to so determine. I can determine what facts are and beyond that I don't know that I have any authority." (Bone tran., 9/7/90, p. 5, l. 17-22) See also (Bone tran., 9/7/90, p. 10, l. 8-18) * * * *it's a difficult matter for the Court because I think my trained inclination, my experience, is to allow the motion, but I have this reservation by the direction from the Supreme Court. It is so limited that I believe that I am without discretion to do that which the Respondent would*

> *like the Court to do and which the Court would normally do in this proceeding.*" (Bone tran., 9/7/90, p. 12, l. 19-24; p. 13, l. 1-2). (emphasis added)

The first witness called by Greening was the chief accounting official subpoenaed from the State Comptroller's office to testify as to the issue of payment. (Bone tran., 9/7/90, p. 16, l. 12-13; p. 17, l. 10-11) This testimony also bore on the issue of criminal intent. (Bone tran., 9/7/90, p. 18, l. 4-9). Upon objection of the ARDC, Judge Bone refused to allow this witness to testify (Bone tran., 9/7/90, p. 19, l. 12) and refused to allow a formal offer of proof. (Bone tran., 9/7/90, p. 20, l. 8-9). The Court observed that "the question of payment, *if it's in the case*, is payment as directed by the Supreme Court. And then the Supreme Court can decide the effect, if there's a failure to pay, a consequence of that. It's payment pursuant to rule, is it not, Mr. Moran * * *". (emphasis added) (Bone tran., 9/7/90, p. 19, l. 6-10). The Court noted that "* * * there are questions between the law and the facts which have to be sorted out. The law is obviously for the Supreme Court and the facts are for this Court. I think this Court has to do what Mr. Moran stated. Was there a check paid on a certain date? Those facts need to be found by this Court. What is inferred by that is for the Supreme Court. I don't think the Court should go beyond what I just suggested would be the responsibility of this Court." (Bone tran., 9/7/90, p. 66-68)

Greening inquired whether the Court would make findings of fact with regard to criminal intent. (Bone tran., 9/7/90, p. 68, l. 2-3) The Court responded:

> "I think that [intent] is beyond the direction of the [Supreme] Court * * * the [Bone] Court cannot make determinations * * * of whether or not * * * he did

things in a knowing or voluntary manner * * * for the purpose of practicing law that type of thing * * * that's for the Supreme Court to determine." (Bone tran., 9/7/90, p. 68, l. 16-23) "Rather than me [Judge Bone] talk anymore, Mr. Moran, do you understand what counsel is getting at and what he's asking the Court to rule upon?"

Mr. Moran, the representative from the ARDC, stated:

"In this case, * * * the Supreme Court handed down an order and said Judge Bone you will tell us the story of what went on here, the bare story without making conclusions about what the story means or what the moral of the story is * * *. We believe that the Court * * * can tell the Supreme Court what the circumstances were * * * but we believe that the intent is really a question of law that the Supreme Court can * * * decide when you told them the story of what went on * * *." (Bone tran., 9/7/90, p. 69, l. 13-24; p. 70, l. 1-10)

Judge Bone accepted this direction concluding that:

"I agree with Mr. Moran * * * I need to tell the story to the Supreme Court." (Bone tran., 9/7/90, p. 71, l. 2-19)

4. Judge Bone proceeding of September 21, 1990

The fourth proceeding before Judge Bone dealt with final motions and argument. The defense waived closing argument.

On October 4, 1990, Judge Bone filed his report (dated October 3, 1990) with the Illinois Supreme Court stating only: "[t]he facts with respect to whether Respondent engaged in the unauthorized practice of law * * * were found * * * beyond a reasonable doubt * * *." (Appendix F)

5. Proceedings before Justices

After receiving Judge Bone's report, the Supreme Court established a briefing schedule limiting briefs to "* * * the issue of whether the Respondent [Greening] engaged in the unauthorized practice of law after his name had been removed from the Master Roll [for failure to pay the fee] * * *."[7] (Appendix G) On May 29, 1991, the Court, without a hearing or briefing on either the constitutional issues or the issues of payment or intent, found Greening guilty of indirect criminal contempt.

On June 25, 1991, the Supreme Court conducted a sentencing hearing. Greening renewed his objection that the Court failed to provide a hearing on the constitutional and legal issues; that there was no finding of intent; and, that suspension proceedings were not resolved. The ARDC noted during their statement that Greening raised various constitutional issues and urged the Court to summarily dispose of these matters as being without merit. After reaffirming Greening guilt of criminal contempt, the Court did so:

> "The Court also has considered respondent's other constitutional challenges made throughout the course of these proceedings, and we find them to be without merit." (M.R. 5916, order filed June 25, 1991) (Appendix B, page 2)

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[7] In his brief, Greening specifically stated "Defendant respects the Court's order and has excluded all arguments concerning * * * constitutional challenges to various proceedings and objections to specific procedure. In respecting the Court's exclusion of arguments on these matters, Defendant does not waive his right to contest these issues * * * Defendant renews his constitutional challenges as set forth in his answer filed September 11, 1989, and April 30, 1990 * * *. The Defendant objects that these various issues have never been considered throughout these proceedings."

The Court dismissed Greening's constitutional claims on the grounds that "[i]t is well established that it is exclusively within the prerogative of the Supreme Court to determine who shall be permitted to practice law in Illinois". (M.R. 5916, order filed June 25, 1991) (Appendix B., page 2)

TIMING OF PRESENTATION OF FEDERAL QUESTIONS

Greening formally raised his federal constitutional issues at least six times:

(a) In his amended response (9/22/89) to the order to show cause why his license should not be suspended, Greening stated that the "Supreme Court of Illinois has violated Respondent's due process rights under * * * the Fourteenth Amendment to the United States Constitution * * *".

(b) In his response to the order to show cause why he should not be held in indirect criminal contempt, Greening "* * * reiterates its [sic] constitutional objections previously raised" (M.R. 5916, written response to order of March 26, 1990 * * *, filed April 30, 1990, p. 3, item 11)

(c) On June 21, 1990, in the first of a series of criminal contempt proceedings before Judge Bone, he renewed his request for a hearing on the constitutional issues. (Bone tran., 6/21/90, p. 9, l. 4-8)

(d) On March 7, 1991, in his brief and argument, Greening stated in a section labeled "unresolved matters" that: "Defendant respects the Court's order and has excluded all arguments concerning * * * constitutional challenges * * * [but]

does not waive his right to contest these issues * * * [and] objects that these issues have never been considered * * *." (M.R. 5916, Respondent's brief, p. 2, filed March 7, 1991)

(e) On April 24, 1991, in his Surrebuttal Brief in a section labeled "Reaffirmation of Unresolved Matters", Greening stated: "Defendant renews his constitutional challenges as set forth * * * [and] objects that these various issues have never been considered * * *." (M.R. 5916, Surrebuttal Brief and Argument of Respondent-Defendant, p. 8-9, filed April 24, 1991)

(f) On June 25, 1991, he stated to the Illinois Supreme Court that: "In the course of presenting the fee raising issue, the actions of the Court and its agents, the ARDC, have precipitated a series of constitutional issues all of which have yet to be addressed * * *." (Report of Proceedings, June 25, 1991, p. 4, lines 10-15)

ARGUMENT SUPPORTING PETITION

The Illinois Supreme Court invoked disciplinary proceedings and subjected Greening to a unique set of procedures for which there were no rules. Greening asks the Court to determine whether a state supreme court, under a theory of exclusive, inherent power can suspend due process and equal protection guarantees insured to all citizens against state encroachment under the Fourteenth Amendment.

This case is not a bar admission case, nor an action to enjoin State action or to have Supreme Court rules concerning the disciplining of attorneys declared unconstitu-

tional. This petition does not challenge the authority of the Illinois Supreme Court to regulate the practice of law; register or license attorneys; or to seek review of attorney disciplinary procedure established in Illinois.

Petitioner's research indicates that this is a case of first impression.

(I) DUE PROCESS WAS DENIED IN LICENSE REVOCATION PROCEEDINGS.

(a) NO HEARING WAS PROVIDED ON THE TERMINATION OF GREENING'S LICENSE TO PRACTICE LAW.

Greening was licensed to practice law for forty years without disciplinary action taken against him and had a property right in the continued practice of his profession, which the State could not deny him without due process (*Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1984)). The minimal procedural requirements for the impairment of these rights is a matter of Federal law, and these requirements are not diminished by the fact that the State may have adopted procedures that it deems adequate for adverse official action (*Vitek v. Jones*, 445 U.S. 480 (1980); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982)). Regardless of the fact that State issues are involved, under Federal law Greening's right to practice law was an entitlement which could not be taken away without a prior hearing or a prompt hearing afterwards (*Bell v. Burson*, 402 U.S. 535 (1971); *Berry v. Barchi*, 443 U.S. 55 (1979)). It does not matter how simple the issue or how obvious the facts. The nature of the issues may affect the type of hearing but does dispense with its requirement. " * * * [D]ue process requires that when a State seeks to terminate an interest [in a license] it must afford notice and opportunity for a hearing appro-

priate to the nature of the case *before* the termination becomes effective." (*Bell*, p. 542).

Bell is dispositive. *Bell's* driver's license was suspended under the State's safety and financial responsibility law providing for an automatic suspension if a driver was involved in an accident and did not have insurance. *Bell* maintained that he had no liability because he clearly was not at fault. The State maintained that the statute was simple and no issues other than the fact of "involvement in an accident" and "no insurance" were relevant. In *Bell*, this Court stated:

> "suspension of issued licenses thus involves State action that adjudicates important interests of the licensees. In such cases, the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. This is but an application of the general proposition that relevant constitutional restraints limit State power to terminate an entitlement, whether the entitlement is denominated, a right, or a privilege (*Bell* at p. 539). * * * [W]e look to substance, not to bare form, to determine whether constitutional minimums have been honored" (citation omitted) (*Bell* at p. 541). * * * The hearing required by due process must be 'meaningful' * * * and 'appropriate to the nature of the case' " (*Bell* at p. 552).

In *Berry*, New York made trainers responsible for the condition of their horses before, during, and after a race. Barchi was a trainer whose horse was found to have been drugged; Barchi's license was summarily suspended. The Supreme Court found that the lack of a pre-suspension hearing did not violate due process, *but the failure to provide a timely post-suspension hearing did.* The State:

> "* * * may impose an interim suspension pending a prompt judicial or administrative hearing that would definitely determine the issues * * *. (*Berry* at p. 64).

> * * * [T]he opportunity to be heard must be 'at a meaningful time and in a meaningful manner.' * * * Here, the provision for an administrative hearing, neither on its face nor as applied in this case, assured a prompt proceeding and prompt disposition of the outstanding issues * * * . Once the suspension has been imposed * * * a speedy resolution of the controversy became paramount. It was necessary that Barchi be assured a prompt postsuspension hearing, one that would proceed and be concluded without appreciable delay." (*Berry* at p. 66)

In the case at bar, neither a pre-suspension or post-suspension hearing on the *de facto* suspension of Greening's license was given.

(b) NO HEARING WAS PROVIDED ON STATE CONSTITUTIONAL ISSUES

The whole thrust of Greening's challenge centered on whether the use of funds raised by Supreme Court rule were in accordance with State constitutional and statutory law. Greening's challenge was based on sound legal doctrine: In *Hoover v. Ronwin*, 466 U.S. 588 (1984) this Court held that attorney regulation by a commission, which was structured identical to the one utilized in Illinois, was a state governmental function; In *Attorney Registration and Disciplinary Commission v. Harris*, 595 F.Supp. 107 (1984), the District Court held that the ARDC was not an independent functionary, but a part of the Illinois Supreme Court and the funds raised by the ARDC were funds belonging to the Court; The Illinois State Constitution declares that the Illinois General Assembly has the exclusive authority to raise revenue and fees (Ill. Const. Art. IX, Secs. 1 and 2) (Appendix H); State statutes (Ill.Rev.Stat. (1989) ch. 127, pars. 140, 170 and 171) prescribe how the Supreme Court and other State agencies are required to administer the funds they collect.

When the State Supreme Court and its agent the ARDC refused to address Greening's questions, he attempted to test his interpretation of State law through the protest of his 1989 fee.[8] When Greening did so, the Court and the ARDC invoked the automatic provisions of Rule 756 and notified the legal community that Greening was no longer permitted to practice law. Thereafter, the Court avoided the constitutional and payment issues by refusing a hearing on its summary termination of Greening's proprietary right to practice law.

Although constitutional issues were raised in the response to the Supreme Court's August 7, 1989, order for Greening to show cause why his license should not be suspended, no hearing was provided. Twenty two months later, the Supreme Court summarily dismissed its own license suspension proceedings as "moot" after sentencing Greening on the later charge of indirect criminal contempt. (Appendix B)

Greening had a right to legally challenge the State Supreme Court's use of funds raised by rule and the basis of its practices (*Adams v. Atty. Reg. Dscpl. Comm.*, 801 F.2d 968 (7th Cir. 1986); *Supreme Court of Virginia v. Consumers Union*, 100 S.Ct. 1967 (1980)) and the State is required to provide a forum for such challenges. The failure of the State Supreme Court to provide an opportunity to address these issues was State action under

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[8] Greening attempted to raise the issues in the same manner as a tax protest. However, the Court assesses this fee through its own Rule. None of the State statutes dealing with the protesting of taxes and fees were applicable since these statutes were legislatively imposed and executively enforced, both of which were subject to judicial challenge. Here we have judicially imposed revenue raising and judicially enforced collection subject to no independent judicial review.

the Fourteenth Amendment and a direct denial of due process.

(c) THE ISSUE OF PAYMENT WAS NOT ADDRESSED

Payment was an indispensable element and a major issue to the summary denial of Greening's proprietary right to practice law. The Court refused to consider payment other than to use alleged failure to pay as a sword to cut off Greening's property right in his license. Since payment was a critical factor in the Court's regulatory scheme, the Court could not, consistent with due process, eliminate it from consideration (*Bell v. Burson* at page 542).

As a minimum due process requirement, the Illinois Supreme Court should have afforded Greening an opportunity for a hearing on the legal issues he raised (*Berry v. Barchi*, 443 U.S. 55 (1979)) rather than invoking criminal contempt proceedings to punish him for exercising his right to make that challenge. When the Court declined to provide any forum to address Greening's issues and instead denied his proprietary right to practice his profession, Greening faced a choice between capitulation without a hearing or his livelihood. Not being able to forego his livelihood, Greening tendered payment, but the Court refused to accept it and its agent, the ARDC, continued to proceed as if payment were never made. This was in contravention of its own Rule 756(e) providing that "an attorney whose name has been removed from the Master Roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying * * *".[9]

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[9] Only payment was at issue. See footnote 1.

(II) DUE PROCESS WAS NOT AFFORDED IN THE CRIMINAL CONTEMPT PROCEEDINGS

(a) NO HEARING WAS PROVIDED ON EITHER FEDERAL OR STATE CONSTITUTIONAL ISSUES

By the limitations placed on the Bone proceedings by the Supreme Court, no legal issues were considered. The Supreme Court consciously ignored any challenge to its original summary denial of Greening's proprietary right to his license and concomitantly excluded from review all of the constitutional issues and points of law which Greening sought to have reviewed. These exclusions are in direct opposition to the representations made by the Court's agents, the ARDC, to the Federal District Court that Greening would be afforded a full hearing. (see footnote 6). The closing statement of the ARDC, at the fourth Bone proceeding, is a clear expression that no constitutional issues, either Federal or State, and no issues involving payment or intent were to be considered:

> The ARDC stated: "* * * I think it is important to remember here in this proceeding that the administrator and the Court, the Supreme Court, are not the entities of the individuals that are on trial. Mr. Greening is on trial. His conduct is what this Court is directed to flush out * * * we simply ask that the Court [Bone] review the record with the proviso and find that the administrator has proven beyond a reasonable doubt * * * the factual issues." (Bone tran., 9/21/90, p. 30, l. 17-24; p. 31, l. 1-4)

After the Bone proceedings were completed, the Illinois Supreme Court neatly excluded its own consideration of state or federal constitutional issues by limiting the subject matter of the briefs. (M.R. 5916, Order of December 27, 1990) (Appendix G) This was despite the fact that Judge Bone deferred legal and constitutional issues to the Illinois Supreme Court and despite the fact that the ARDC

stated before Judge Bone "* * * Mr. Greening would have the opportunity to raise all issues of law in the Illinois Supreme Court." (Bone tran., 6/21/90, p. 12, l. 1-3). Greening specifically pointed out to the Illinois Supreme Court that the federal and state constitutional issues were not addressed because the parties were precluded from addressing them by the Supreme Court's order limiting the contents of the briefs (M.R. 5916, Brief and Argument of Respondent-Defendant, p. 2). (See also, Timing of Presentation of Federal Questions, Items (d) and (e), pages 12-13 *supra*.)

It was only after the Court found Greening guilty that it even acknowledged the existence of constitutional issues. At the sentencing hearing, the Court commented that all constitutional issues were meritless.[10] (Appendix B., p. 2) To invoke a criminal proceeding in which constitutional issues are not addressed is a direct violation of due process under the Fourteenth Amendment to the U.S. Constitution.

(b) NO HEARING WAS PROVIDED ON THE ISSUE OF PAYMENT

The charge against Greening was the unauthorized practice of law after his name had been removed from the Master Roll for failure to pay the fee. Payment is, therefore, an affirmative defense. Judge Bone determined that payment was an issue outside his authority to decide—"* * * the Supreme Court can decide the effect [of payment] * * *."

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[10] The Court made no distinction between constitutional issues going to the use of funds raised by court rule (the issues first raised by Greening) and the constitutional issues and legal defenses ignored during the bifurcated Bone-Justices proceedings.

(Bone tran., 9/7/90, p. 66-68) and declined to allow any testimony on payment on the grounds that if payment were made "* * * the Supreme Court can decide the effect." (Bone tran., 9/9/90, p. 19, l. 6-10). Bone ruled that payment involved a conclusion of fact and law. Therefore, Judge Bone left this finding to the Court and refused to hear evidence on this factual question. The issue of payment was excluded from the briefing before the Justices. (Appendix G) A finding on payment did not occur either before Judge Bone or the Justices. Since payment was an indispensable element in the criminal trial, its exclusion violated due process under the Fourteenth Amendment to the U.S. Constitution.

(c) NO HEARING WAS PROVIDED ON THE ISSUE OF INTENT

The law on contempt is clear. To constitute criminal contempt, the conduct must be directed against the dignity and authority of the Court or a judge acting judicially (*People v. Gholson*, 412 Ill. 294 (1952)). The state must establish beyond a reasonable doubt that plaintiff willfully intended to undermine the dignity and authority of the Court. The defendant's conduct must be willful and the state must prove willfulness beyond a reasonable doubt (*People v. Witherspoon*, 52 Ill. App. 3d 151 (1957)). Criminal contempt consists of a contemptuous act and a wrongful state of mind (*In Re Farquhar*, 160 U.S. App. D.C. 295, 298 (1973)) and each of these elements must be proven beyond a reasonable doubt (*Parker v. United States*, 373 A.2d 906 (1977)). Consequently, the requisite mental state for a conviction of indirect criminal contempt is to show contumacious intent. The issue of intent was never addressed or proved. Judge Bone, as trier of fact, specifically stated that he would not address intent; that intent was

for the Supreme Court to decide. (Bone tran., 9/7/90, p. 68, l. 16-23). The Illinois Supreme Court never addressed intent; it only addressed specific conduct which it adopted from Judge Bone's report.

To separate the finding of intent between Judge Bone and the Justices is itself a fundamental violation of due process. (*Morgan v. United States*, 298 U.S. 468 (1936)) It is a basic principle of American criminal jurisprudence that the officer who hears and sees the evidence, and observes and "feels" the conduct, demeanor and testimony of the witnesses must draw the final conclusion on intent. Intent is a credibility dependent determination requiring a live exchange. It can not be determined by other Judges through the sterile and isolated reading of a cold transcript after one Judge tells "the bare story without making conclusions" (Bone tran., 9/7/90, p. 69, l. 13-24; p. 70, l. 1-10).

The issue in this petition is whether the Illinois Supreme Court has inherent authority to ignore its own rules and ignore State statutes and constitutional provisions in order to take punitive action against a licensee who raises issues it refuses to address. There was no criminal conduct, only summary punitive action by the Court. All Judge Bone found were facts of specific conduct. Judge Bone did not draw conclusions from these isolated facts to find the ultimate facts which constitute the elements of a crime. Judge Bone did not even find that Greening practiced law, much less that he had engaged in the unauthorized practice of law. Both the criminal act and the criminal intent must be proven beyond a reasonable doubt and neither were. Judge Bone in his report stated: "[t]he facts with respect to whether Respondent engaged in the unauthorized practice of law * * * were found * * * from [sources omitted]. They have been proven beyond a reasonable doubt * * *." (Appendix F). Judge Bone's standard of

"beyond a reasonable doubt" went to the existence of specific base conduct, not to criminal conduct or criminal intent. Judge Bone stated he could not " * * * make determination * * * of whether or not [Greening] did things in a knowing * * * manner * * *." To do so would invade the province of the Supreme Court. Judge Bone drew no conclusions as to whether any conduct was criminal. The Illinois Supreme Court took Judge Bone's perniciously ambiguous "conclusion" to find beyond a reasonable doubt that Greening engaged in the unauthorized practice of law with the intent to be contumacious of the Court. By the rewriting of a sentence, the Illinois Supreme Court completed a criminal trial without ever finding the elements of the crime. Judge Bone heard the evidence, but made no finding to support conviction; the Justices made the findings of criminal action, but heard no evidence. Consequently, no hearing was afforded at any level of the bifurcated proceedings on the essential element of intent.

Intent could not be determined in isolation from the issue of payment, but Judge Bone excluded testimony bearing on intent and payment. Not only did Greening pay, a clear negation of contemptuous intent, but Judge Mills of the Federal District Court, after making inquires to the clerk of the Illinois Supreme Court, specifically found in his order that Greening *was licensed to practice law in Illinois*. (See Footnote 4) The fundamental confusion created by the Illinois Supreme Court as to Greening's right to practice law during his challenge of the Illinois Supreme Court's use of funds raised by Court rules destroys criminal intent and creates reasonable doubt as a matter of law.

The failure to afford a hearing on the requisite intent in a criminal case is a fundamental violation of due process under the Fourteenth Amendment of the U.S. Constitution.

(d) NO TEST WAS PERMITTED ON THE SUFFICIENCY OF THE PROSECUTION'S EVIDENCE

At the conclusion of the ARDC's case in chief, Greening moved for a determination that the ARDC's case was insufficient to support the charge of indirect criminal contempt. It is an absolute requirement of due process that no person shall be forced to defend himself in a criminal matter unless and until the State has presented a *prima facie* case on the essential elements of the offense charged. The Defendant has a right to test that sufficiency before being put to the burden of defense. This point was conceded by Judge Bone who admitted that if he were free to do so, he would have ruled in the Defendant's favor and acquitted Greening. (Bone tran., 9/7/90, p. 12, l. 19-24; p. 13, l. 1-2) Judge Bone declined to acquit Greening because he did not have the authority to do so under the Supreme Court's order and forced Greening to go forward. The failure to allow the trier of fact, Judge Bone, to address sufficiency of the evidence was a direct violation of due process under the Fourteenth Amendment to the U.S. Constitution.

(e) THE RIGHT TO CONFRONTATION WAS DENIED

Through motions at the Bone proceedings, Greening challenged the propriety of the ARDC to act as criminal investigator, prosecutor, and counsel to the Supreme Court all at the same time and to act as prosecutor in contravention of the constitutional authority of the Illinois Attorney General. To all these challenges, the ARDC responded that the Supreme Court " * * * has an original jurisdiction and inherent authority to proceed. The Court can delegate certain functions to the Court, as they have in this case, and to the administrator [of the ARDC]. We

believe the administrator is not a party. *We are not a prosecutor.* But, as custom and practice will show, the administrator performs the function of relator to the Court." (Bone tran., 6/21/90, p. 13, l. 15-23) "The Court has appointed the administrator as relator in this matter, not a party." (Bone tran., 6/21/90, p. 17, l. 13-17) Judge Bone determined "I am going to find that pursuant to the direction of the Supreme Court that I have no authority to determine who the parties are." (Bone tran., 6/21/90, p. 14, l. 22-24) "The Court agrees with [the ARDC]. Original jurisdiction is with the Supreme Court. ARDC is a creation of the Supreme Court. It should be their determination whether or not counsel has standing to appear before the Court." (Bone tran., 6/21/90, p. 17, l. 18-22) When Greening attempted to subpoena the ARDC investigator and her investigative files, Judge Bone quashed the subpoena *because the investigator was a prosecutor* and the court in a regular criminal case would not allow the defense to subpoena the States Attorney (Bone tran., 9/21/91, p. 10, l. 19-21; p. 21, l. 17-22).

The commingling of roles by persons who are employees of the Supreme Court (*Atty. Reg. and Discpl. Comm. v. Harris*, 595 F.Supp. 107 (1984)) denied Greening his right of confrontation and the right to cross-examine his accuser on essential factual issues.[11] The denial of this right was a direct violation of the due process clause of the Fourteenth Amendment of the U.S. Constitution.

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[11] The verified report of the investigation provided the basis for the criminal contempt petition. If the Attorney General were acting as the prosecutor, as the constitutional law of Illinois suggests, then the ARDC would have been subject to subpoena just as any "police officer" or complaining witness.

(f) NO APPEAL WAS PROVIDED

The proceedings to which Greening was subject provide no manner of appeal or independent review. The Supreme Court takes the position that it has the exclusive and inherent authority to regulate the practice of law and, therefore, is the court of original jurisdiction and last resort.[12] To establish a criminal proceeding with the "command influence" exhibited under the process adopted by the Illinois Supreme Court in Greening's situation and to provide no appeal or independent review violates all notions of fundamental fairness. Every criminal defendant should be afforded the right to one judicial review. Here we have Court created, enforced and adjudicated criminal conduct, the enforcement and adjudication of which is subject to no rules. All criminal defendants in Illinois have the right to appeal.[13] Once the State has established an appeal process, it must afford all similarly situated defendants equal and reasonable access to that process. Its action to preclude selected defendants of the appeal opportunity is a

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[12] The Illinois Constitution specifies the only areas of original jurisdiction for the Supreme Court (Ill. Const., Art. VI, Sec. 4(a)). This specification does not include the subject matter of this suit. In addition, the concept of Masters and Magistrates was abolished in Illinois in the judicial reform of 1964 and this abolition was carried through into the new constitution in 1970. Since Judge Bone, by his own finding, was not sitting as a circuit judge, he was acting in a judicial capacity constitutionally abolished in Illinois law.

[13] Under the Illinois Constitution, the circuit courts have original jurisdiction over all justiciable issues, except where the Supreme Court has original and exclusive jurisdiction relating to redistricting and the ability of the Governor to serve or resume office (Ill. Const., Art. VI, Sec. 9) and appeals from final judgments of a circuit are a matter of right to the appellate court except where appealable directly to the supreme court, and except in criminal cases from a judgment of acquittal. (Ill. Const., Art. VI, Sec. 6)

denial of both equal protection and due process under the Fourteenth Amendment to the U.S. Constitution.

The failure to provide for any appellate process in a criminal proceedings is a direct violation of due process under the Fourteenth Amendment of the U.S. Constitution.[14]

(g) AN IMPARTIAL TRIBUNAL WAS NOT PROVIDED

The U.S. Constitution requires that judicial proceedings must be fundamentally fair and fundamental fairness requires that there be an impartial and unbiased decision maker. The process followed by the Illinois Supreme Court denied an impartial tribunal. The foundation for the Court's position is that only it has the exclusive and inherent authority to regulate the practice of law, a proposition not in dispute.

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[14] This issue has never been directly decided. The issue has been dicta in cases involving other issues. As Justice Brennan stated in *Jones v. Barnes*, 463 U.S. 745 (1983): "If the question [right to appeal] were to come before us in a proper case, I have little doubt that the passage of nearly 30 years since *Griffin* and some 90 years since *McKane v. Durston*, 153 U.S. 684 (1894), upon which Justice Frankfurter relied, would lead us to reassess the significance of the factors upon which Justice Frankfurter based his conclusion. I also have little doubt that we would decide that a State must afford at least some opportunity for review of convictions * * *. There are few, if any, situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person's liberty or property, and the reversal rate of criminal convictions on mandatory appeals in the state courts, while not overwhelming, is certainly high enough to suggest that depriving defendants of their right to appeal would expose them to an unacceptable risk of erroneous conviction. Of course, a case presenting this question is unlikely to arise, for the very reason that a right of appeal is now universal for all significant criminal convictions."

The Illinois Supreme Court itself controlled this prosecution, not for the administration of justice, but to protect its own self interest—the maintenance of a self-controlled funding scheme to protect its conscribed inherent power. There was no appeal to any independent authority and there were no rules. The proceedings used to deprive Greening of his license were not disciplinary proceedings based upon misconduct. A separate set of rules apply in disciplinary cases which provide for notice, hearing and review and thus provide some semblance of due process. (S.Ct. Rule 753, Ill.Rev.Stat. (1989) ch. 110A, par. 753) Greening was treated uniquely and denied any substantive or procedural rights, not because of misconduct, but because he challenged the system. The summary and *de facto* suspension of his license which denied his proprietary right to practice law was followed by this selective and vindictive prosecution. This was not envisioned by our founding fathers as "inherent in our concept of ordered liberties". The fact that authority may be derived from inherent (rather than constitutional or statutory) power does not sanction these abuses and does not waive minimum federal due process and equal protection rights.

The Illinois Supreme Court has created a separate sovereign who enjoys total immunity and discretion and is accountable to no one, including the constitution. It has created a separate kingdom in which the judge is king and the king can do no wrong. The process, as implemented and operated by the Illinois Supreme Court, has no place in American jurisprudence and is the antithesis of due process. As Madison stated: "The accumulation of all powers, legislative, executive, and judiciary in the same hands, whether of one, a few, or many, and whether hereditary,

self-appointed, or elective, may justly be pronounced the very definition of tyranny."[15]

CONCLUSION

For the reasons herein stated the writ of certiorari to review the two final orders of the Illinois Supreme Court entered May 29, 1991 and June 25, 1991, respectively, should be issued.

Respectfully submitted,

LEGRAND L. MALANY
Counsel of Record
600 South Rosehill
Springfield, Illinois 62704
(217) 525-1132
Attorney for Petitioner

[15] The Federalist, No. XLVII, Madison, N.Y. Packet, February 1, 1788.

APPENDICES

INDEX TO APPENDICES

APPENDIX A

[Filed May 29, 1991]

IN THE SUPREME COURT OF ILLINOIS

M.R. 5916

In re:	)	
	)	Atty. Reg.
Alfred H. Greening, Jr.,	)	& Disc. Comm.
	)	89 CH 425
Respondent	)	
	)	

ORDER

This cause having come for consideration on this Court's rule to show cause, the factual findings made by the Circuit Court of the Seventh Judicial Circuit on the issues formed by the verified supplemental report filed by the Administrator of the Attorney Registration and Disciplinary Commission and the answer to the rule to show cause filed by respondent Alfred H. Greening, Jr., and on the briefs filed by the parties, and this Court being fully advised in the premises;

It is the determination of this Court that it has been established beyond a reasonable doubt that respondent engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989. The rule to show cause that issued to respondent on March 26, 1990, is enforced, and respondent is held in indirect criminal contempt of Court for engaging in the unauthorized practice of law. Respondent and the representative of the Administrator are directed to appear for sentencing on this contempt on Tuesday, June

25, 1991, at 3:00 P.M. in Springfield. Arguments will be limited to ten minutes for respondent, ten minutes for the Administrator, and five minutes for respondent's rebuttal.

Miller, C.J. and Moran, J. took no part.

APPENDIX B

[Filed June 25, 1991]

IN THE SUPREME COURT OF ILLINOIS

M.R. 5916

In re:	)	
	)	Atty. Reg.
Alfred H. Greening, Jr.,	)	& Disc. Comm.
	)	89 CH 425
Respondent	)	
	)	

ORDER

Respondent Alfred H. Greening, Jr. having been held in indirect criminal contempt of Court on May 29, 1991, for engaging in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989, respondent and the representative of the Administrator having appeared for sentencing on this contempt on June 25, 1991, and the Court being fully advised in the premises;

The Court reiterates its finding that it has been established beyond a reasonable doubt that respondent engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys; specifically, respondent performed the following acts after March 1, 1989, in the Halbert Estate case (Sangamon County No. 88 P 97) which constitute the practice of law:

1. Advised the estate administrator of the proper procedures for closing an estate under the Probate Act of 1975 (Ill. Rev. Stat. 1989, ch. 110½, par. 1-1 *et seq.*);

2. Prepared a final accounting presumably as required by Section 24-1 of the Probate Act of 1975 (Ill. Rev. Stat. 1989, ch. 110½, par. 24-1); and

3. After obtaining the signature of the estate administrator on the final accounting, presented it to Judge Friedman.

The Court also finds that respondent's argument that removing his name from the Master Roll of Attorneys pursuant to the provisions of Supreme Court Rule 756 constitutes a violation of his due process rights because he is in compliance with "AN ACT to revise the law in relation to attorneys and counselors" (Ill. Rev. Stat. 1989, ch. 13, par. 1 *et seq.*) and because the procedures prescribed by the Act were not followed here is an argument without merit. It is well established that it is exclusively within the prerogative of the Supreme Court to determine who shall be permitted to practice law in Illinois. While the General Assembly may adopt acts which relate to the practice of law "[s]uch statutes are merely in aid of, and do not supersede or detract from, the power of the judicial department to control the practice of law." *People ex rel. Chicago Bar Association v. Goodman* (1937), 366 Ill. 346, 349.

The Court also has considered respondent's other constitutional challenges made throughout the course of these proceedings, and we find them to be without merit.

THEREFORE respondent is sentenced as follows:

Respondent is fined in the amount of two hundred dollars ($200), to be paid to the Clerk of this Court on or before July 25, 1991.

The rule to show cause that issued to respondent on August 7, 1989, is discharged, having been superceded by the rule to show cause enforced on May 29, 1991.

Miller, C.J., and Moran, J. took no part.

APPENDIX C

[Filed October 26, 1989]

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS–
SPRINGFIELD DIVISION

IN RE: DONALD D. KURTZ and BLANCE H. KURTZ, Debtors.	)	
DONALD KURTZ, et al., Plaintiffs,	)	
v.	)	No. 86-3235
MICHAEL J. SCULLY AND PETER D. SCULLY, Trustee under the Will of Thomas A. Scully, Deceased, et al., Defendants.	)	

ORDER

RICHARD MILLS, District Judge:

This Court has received a letter dated October 24, 1989, from Attorney Alfred H. Greening, Jr., who is attorney of record for the bankrupt estate in this case. The letter refers to certain documents which relate to a pending action before the Disciplinary Committee of the Supreme

Court of Illinois involving Attorney Greening. Attorney Greening left copies of these documents with the Court on October 19, 1989. Neither the documents themselves nor Attorney Greening's letter of October 24 indicate that copies were served on opposing counsel.

The Supreme Court of Illinois has issued a rule to show cause against Attorney Greening who has refused to pay his registration fee. On October 25, 1989, this Court contacted the Clerk of the Supreme Court of Illinois to determine the current status of Attorney Greening's cases. At present, Attorney Greening is entitled to practice law in Illinois and thus, pursuant to Local Rule 1, he may also practice before this Court. If Attorney Greening is suspended by the Supreme Court of Illinois, he is directed to immediately notify this Court which will then take whatever steps may be appropriate.

We remind Attorney Greening that it is highly inappropriate for counsel to engage in *ex parte* communications with the Court. *Cochran v. Celotex Corp.*, 125 F.D.R. 472 (C.D. Ill. 1989). Attorney Greening is therefore ordered that all documents or motions which are relevant to this action should in the future be filed with the Clerk of Court. The Court will also forward copies of the documents left with the Court and a copy of Attorney Greening's letter to counsel of record for all parties.

Ergo, Attorney Greening is ordered to stop all *ex parte* communications with this Court. Any documents which he wishes to file in the pending action should be filed with the Clerk of Court. Copies of the letter and documents sent to this Court will be forwarded to counsel of record for all parties. If Attorney Greening is suspended by the supreme court, he is ordered to notify this Court of that fact within 2 days of his suspension.

ENTER: 25 October, 1989.

FOR THE COURT:

/s/ RICHARD MILLS
RICHARD MILLS
United States District Judge

APPENDIX D

[*Letterhead Of*]

STATE OF ILLINOIS
SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD 62706

JULEANN HORNYAK
Clerk of the Court
(217) 782-2035

FIRST DISTRICT OFFICE
Room 30-129
Richard J. Daley Center
Chicago 60602
(312) 792-1332

September 27, 1989

Mr. Alfred H. Greening, Jr.
Attorney at Law
101 West Main Street
P.O. Box 5
Williamsville, IL 62693

Dear Mr. Greening:

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

M.R. 5916—In re: Alfred H. Greening, Jr. Disciplinary Commission.

The clerk of this Court is directed to return to respondent Alfred H. Greening, Jr. the check in the amount of $230.00 tendered with respondent's answer to the rule to show cause. The rule to show cause that issued to respondent on August 7, 1989, pursuant to Supreme Court Rule 756 is continued to and in-

cluding October 4, 1989, to give respondent the opportunity to make payment of the registration fee and penalty to the Attorney Registration and Disciplinary Commission. Miller, J., took no part.

cc: LeGrand L. Malany
Deborah Kennedy
Kenneth Jablonski, Clerk of Commission

APPENDIX E

[Filed May 30, 1990]

M.R. 5916

IN THE
SUPREME COURT OF ILLINOIS

In re:	)	
	)	Atty. Reg.
Alfred H. Greening, Jr.,	)	& Disc. Comm.
	)	89 CH 425
Respondent	)	
	)	

ORDER

The Administrator of the Attorney Registration and Disciplinary Commission having alleged in a verified supplemental report filed with the Court on February 13, 1990, that respondent Alfred H. Greening, Jr. has engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989, pursuant to Supreme Court Rule 756 for failing to register and pay the registration fee for the year 1989, and respondent having answered the rule to show cause that issued to him on March 26, 1990, directing him to show cause why he should not be held in indirect criminal contempt of Court for engaging in the unauthorized practice of law;

It is ordered that the rule to show cause is continued, and that respondent and the representative of the Attorney Registration and Disciplinary Commission appear before the Honorable J. David Bone, Judge of the Seventh Judicial Circuit, in Room D, Third Floor, of the Sangamon

County Courthouse at 9:30 A.M. on Thursday, June 21, 1990, for the purpose of an evidentiary hearing in which only findings of fact shall be made on the issues formed by the Administrator's verified report and the respondent's answer to the rule to show cause. The transcript of the proceedings before Judge Bone shall be filed with the Clerk of this Court.

Miller, J. took no part.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court this 30th day of May 1990.

/s/ JULEANN HORYNAK Clerk,
Supreme Court of the State of Illinois.

APPENDIX F

[Filed October 4, 1990]

IN THE
SUPREME COURT OF ILLINOIS

IN THE MATTER OF:	)	Supreme Court
	)	No. M.R. 5916
ALFRED H. GREENING, JR.,	)	
	)	Administrator's
Attorney-Respondent.	)	No. 89-CH-425
	)	

REPORT OF HEARINGS CONDUCTED PURSUANT TO ORDER ENTERED MAY 30, 1990

J. David Bone, Judge of the Seventh Judicial Circuit, designated by order of the Supreme Court of Illinois entered on May 30, 1990, to hear evidence and make findings of fact on the issues formed by the Administrator's verified reports and the Respondent's answer to the rule to show cause, reports as follows:

1. The pleadings consist of the Administrator's verified supplemental report filed with the Supreme Court on February 13, 1990, and the Respondent's answer to the rule to show cause filed April 30, 1990. They form the basis on which evidence was offered and received.

2. Numerous motions were presented to this Court by Respondent, both before and during trial. Those within the province of this Court were ruled upon (misdemeanor discovery, bill of particulars, lists of witnesses, etc.). Most were found to be otherwise and were deferred to the Supreme Court. Rulings may be found in the record of proceedings or in docket orders filed with the Clerk of the Supreme Court.

3. As a result of said rulings and deferrals, issues raised by Paragraphs Number 1 and Number 8b through 11 of Respondent's answer to the rule to show cause were disregarded (jurisdiction, standing, authority, due process, and equal protection). Issues remaining were whether Respondent both registered with the Attorney Registration and Disciplinary Commission (ARDC) and paid the appropriate fee, and whether he engaged in the unauthorized practice of law after his name was removed from the master roll of attorneys authorized to practice law. The Administrator agreed to limit his evidence of Respondent's conduct to matters set forth in a written specification of factual allegations.

4. Evidentiary hearings were conducted at the Sangamon County Courthouse on August 6, 1990, and on September 7, 1990. Final argument was heard at the Morgan County Courthouse on September 21, 1990. The bifurcation was the result of Respondent's need to take the videotaped deposition of a witness in Cook County who was unable to travel. The subpoena for said deposition was later quashed.

5. The record consists of testimony taken and transcribed and documents offered and received. The reporter's record of proceedings has been filed with the Clerk of the Supreme Court. A stipulation of facts and admissibility of documents received in evidence August 6, 1990, and a document marked Respondent's Number 1, received in evidence September 7, 1990, are submitted with this report.

6. The facts with respect to whether Respondent both registered with the Attorney Registration and Disciplinary Commission and paid the appropriate fee may be found in the attached stipulation, with the exception of Paragraphs 2 through 5, 23, and 24. They are clearly set forth

in chronological order, require no reiteration, and have been proven beyond a reasonable doubt.

7. The facts with respect to whether Respondent engaged in the unauthorized practice of law after his name was removed from the master roll of attorneys authorized to practice law and informed of said removal on or about March 22, 1989, were found from said stipulation in Paragraphs 2 through 5, 23, and 24, and from the testimony presented. They have been proven beyond a reasonable doubt and are set forth as follows:

Respondent was attorney of record for the administrator in case styled *Estate of Halbert*, Number 88-P-97, Sangamon County, Illinois, from the date of filing, February 19, 1988, through its closing on October 27, 1989. This estate was assigned to Judge Friedman.

On or about August 9, 1989, Respondent inquired of Judge Cavanagh, Chief Judge of the Seventh Judicial Circuit, whether he would be permitted to practice law in his courtroom. He was told that he would not be allowed to do so before Judge Cavanagh in Sangamon County, as his name had been removed from the master roll. He did not speak as Chief Judge and intended the ruling to pertain only to cases Respondent had before him personally.

Upon the administrator's request to close the estate, Respondent informed her he may not be allowed to do so but he would find out. She considered it to be a "technical" problem. He advised her on the procedure for completing the estate, he completed the final report for her approval and signature, and received her check of $39 for closing costs.

On or about October 19, 1989, Respondent appeared in Judge Friedman's chambers with a file relating to his

ARDC dispute. Judge Friedman declined to look at Respondent's ARDC file, as he had followed the case in the Chicago Daily Law Bulletin. He did not recall their conversation.

On October 20, 1989, Respondent appeared at the office of the Clerk of the Circuit Court of Sangamon County, Probate Division, and filed with the clerk said final report in said case, tendered said check, and additionally filed an estate closing letter from the Internal Revenue Service and a certificate of discharge and determination of tax issued by the Attorney General.

On the same day (October 20), Respondent reappeared before Judge Friedman. Judge Friedman's docket entry in said Case Number 88-P-97 states: "On October 20, 1989, Alfred H. Greening appeared to obtain an approval of final accounting in this estate. The Court informed him he was not allowed to practice before it until such time as he got his matter with the Attorney Registration and Disciplinary Commission straightened out."

Judge Friedman testified that when Respondent appeared on October 20, 1989, he first inquired if Judge Friedman would allow him to practice, explaining that "he had paid and registered." Respondent was told he had paid his fee "to the wrong people," that he had paid the court and should have paid it to the ARDC. Respondent was told to send someone else to close the estate.

Judge Friedman's court reporter corroborates that Respondent came to Judge Friedman's chambers on two consecutive days on or about the 18th, 19th, or 20th of October, 1989.

Respondent then reported to the administrator that he was unable to close the estate. On his recommendation

and with the administrator's approval, Attorney Beth Wilke entered an appearance in said estate and obtained court approval of the final account and a discharge of the administrator on October 27, 1989.

Attorney Howard Blaylock testified that Sangamon County has no local rules of procedure for probate cases. He said that probate procedures are informal and conducted in chambers unless there is a controversy. However, he stated that local practice (and Supreme Court rule) requires a formal motion for leave to withdraw and leave of court before an attorney may withdraw from a probate case.

Respondent did not testify.

Respectfully submitted,

/s/ J. DAVID BONE
J. David Bone
Circuit Judge

JDB/mas

APPENDIX G

[Filed December 27, 1990]

M.R. 5916

IN THE
SUPREME COURT OF ILLINOIS

In re:	)	
	)	Atty. Reg.
Alfred H. Greening, Jr.,	)	& Disc. Comm.
	)	89 CH 425
Respondent	)	
	)	

ORDER

The motion by respondent Alfred H. Greening, Jr. to vacate the briefing schedule of December 5, 1990, and to set a new schedule is allowed. The brief of the Administrator of the Attorney Registration and Disciplinary Commission on the issue of whether respondent engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989, is due on or before January 31, 1991, and the brief of respondent is due on or before March 7, 1991.

Moran, C.J. and Miller, J. took no part.

APPENDIX H

Excerpts from the 1970 Illinois Constitution

ARTICLE II

THE POWERS OF THE STATE

Section
1. Separation of Powers.
2. Powers of Government.

§ 1. Separation of Powers

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

* * *

ARTICLE IX

REVENUE

§ 1. State Revenue Power

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

§ 2. Non-Property Taxes—Classification, Exemptions, Deductions, Allowances and Credits

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

APPENDIX I

Ill.Rev.Stat. 1989, ch. 110A, par. 756

RULE 756. Registration and Fees

(a) **Annual Registration Required.** Except as hereinafter provided, every attorney admitted to practice law in this State shall register and pay an annual registration fee to the Commission on or before the first day of January. Until further order of the court, the following schedule shall apply:

(1) No registration fee is required of an attorney admitted to the bar less than one year before the first day of January for which the registration fee is due; an attorney admitted to the bar for more than one year but less than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $70; an attorney admitted to the bar for more than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $140.

(2) An attorney in the Armed Forces of the United States shall be exempt from paying a registration fee until the first day of January following discharge.

(3) An attorney who has reached the age of 75 years shall be excused from the further payment of registration fees.

(4) An attorney licensed to practice in this State for more than 1 year before the first day of January for which the registration fee is due, but who neither resides nor practices nor is employed in this State, shall pay an annual registration fee of $35.

(5) For purposes of this rule, the time shall be computed from the date of an attorney's initial admission to practice in any jurisdiction in the United States.

(6) Upon written application and for good cause shown, the Administrator may excuse the payment of any

registration fee in any case in which payment thereof will cause undue hardship to the attorney.

(b) **The Master Roll.** The Administrator shall prepare a master roll of attorneys consisting of the names of attorneys who have registered and have paid or are exempt from paying the registration fee. The Administrator shall maintain the master roll in a current status. At all times a copy of the master roll shall be on file in the office of the clerk of the court. An attorney who is not listed on the master roll is not entitled to practice law or to hold himself out as authorized to practice law in this State.

(c) **Notice of Registration.** On or before the first day of November of each year the Administrator shall mail to each attorney on the master roll a notice that annual registration is required on or before the first day of January of the following year. It is the responsibility of each attorney on the master roll to notify the Administrator of any change of address. Failure to receive the notice from the Administrator shall not constitute an excuse for failure to register.

(d) **Removal from the Master Roll.** On February 1 of each year the Administrator shall remove from the master roll the name of any person who has not registered for that year. Any person whose name is not on the master roll and who practices law or who holds himself out as being authorized to practice law in this State is engaged in the unauthorized practice of law and may also be held in contempt of the court.

(e) **Reinstatement to the Master Roll.** An attorney whose name has been removed from the master roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying the registration fee prescribed for the period of his suspension, plus the sum of $10 per month for each month that such registration fee is delinquent. (Amended, effective December 1, 1988.)

(2)

No. 91-490

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

ALFRED H. GREENING, JR.,

Petitioner,

vs.

HONORABLE BEN MILLER, Chief Justice, Illinois Supreme Court, et al.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF IN OPPOSITION OF RESPONDENTS MILLER, CLARK, MORAN, BILANDIC, HEIPLE, FREEMAN, AND CUNNINGHAM

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The state court respondents, the Honorable Ben Miller, Chief Justice of the Supreme Court of Illinois, and the Honorable William G. Clark, Thomas J. Moran, Michael A. Bilandic, James D. Heiple, Charles E. Freeman, and Joseph F. Cunningham, Justices of the Supreme Court of Illinois, respectfully request that this Court deny the petition for a writ of certiorari to the Supreme Court of Illinois.

REASONS WHY THE PETITION SHOULD BE DENIED

In his attempt to obtain review of a final state court proceeding, the petitioner has included as respondents each justice of the Supreme Court of Illinois. Chief Justice Miller and Justice Moran are designated as respondents notwithstanding their recusal from that proceeding, as specified on each of the orders from which the petitioner seeks relief. *See* Petitioner's Appendices A and B, both of which recite that "Miller, C.J., and Moran, J. took no part."

The members of the Illinois Supreme Court present this Brief in Opposition to explain that they have been incorrectly named as parties respondent in this Court. The Illinois Supreme Court acted as the final adjudicator of a contempt proceeding, which was initiated by the Attorney Registration and Disciplinary Commission (ARDC) and in which the petitioner in this Court was the named respondent.

The ARDC, a body consisting of four members of the Illinois bar and three nonlawyers, was created by the Illinois Supreme Court to undertake the administrative supervision of the registration of, and disciplinary proceedings affecting, members of the Illinois bar. Illinois Supreme Court Rule 751, Ill. Rev. Stat. ch. 110A, ¶ 751 (1989). In his petition to this Court, the petitioner acknowledges that the proceedings of which he complains were instituted by the ARDC (Petition at 3). Throughout the proceedings at issue, the ARDC assumed the role of party opponent to Mr. Greening. Nothing in the rules or practice governing contempt or other disciplinary matters aligns the Supreme Court with the ARDC against an attorney during such a

proceeding. The Supreme Court reviews the entire record before it and always remains free to find against the position of the ARDC. *See, e.g., In re Topper*, 135 Ill. 2d 331, 347, 553 N.E.2d 306 (1990).

As noted in his petition (Petition at 5, n.5), Mr. Greening did initiate an action in federal district court to complain of the same events surrounding the state court matter for which review is now sought. The complaint in *Greening v. Moran,** No. 90-3784, U.S. District Court for the Central District of Illinois, Springfield Division, was dismissed on June 21, 1990. That matter is currently pending in the U.S. Court of Appeals for the Seventh Circuit, No. 90-3784. Because a member of the state supreme court was named as a defendant, the court's active participation in that litigation is necessary and appropriate. The same is not true here, and the seven named justices of the supreme court respectfully submit that they should not be required to assume party status at this stage of the contempt proceeding. Any further litigation regarding this matter should be conducted, as it has in the past, between the petitioner and the ARDC.

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* Hon. Thomas J. Moran was named as a defendant individually and in his official capacity as then-Chief Justice of the Illinois Supreme Court. The Seventh Circuit was notified that Chief Justice Miller has succeeded Justice Moran as party defendant to the extent that that matter seeks relief against the Chief Justice in his official capacity. F.R.A.P. 43(c).

CONCLUSION

For the foregoing reasons, and for those reasons as are submitted by the ARDC in substantive opposition to the petition, the Chief Justice and the Justices of the Supreme Court of Illinois respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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(3)

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Petition For Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the Supreme Court of Illinois can summarily remove the name of an individual from the Master Roll of Attorneys authorized to practice law in the State for failing to comply with an administrative requirement, the payment of an annual attorney registration fee, established in relation to the Court's inherent authority to regulate the practice of law?

II. Whether Petitioner was afforded due process guarantees during his prosecution for indirect criminal contempt of the Supreme Court of Illinois for engaging in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys authorized to practice law in the State?

PARTIES TO THE PROCEEDING BELOW

The Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (Commission) by its Administrator, the original complainant and relator throughout the proceedings below, is the proper party-respondent in this Court. Petitioner is in error naming the individual members of the Supreme Court of Illinois and the individual members of the Commission as party-respondents.

These proceedings were initiated on the petition of the Commission's Administrator that a rule to show cause issue to Petitioner why he should not be held in contempt for failing to pay the 1989 annual attorney registration fee. (*In re Greening*, M.R. 5916 in the Supreme Court of Illinois, *Report Pursuant to Supreme Court Rule 756*, filed on July 25, 1989). The proceedings concluded when the Supreme Court of Illinois entered an order sentencing Respondent on a conviction of indirect criminal contempt for engaging in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys authorized to practice law in the State for failing to pay the 1989 attorney registration fee as required by Illinois Supreme Court Rule. (*Order*, M.R. 5916 in the Supreme Court of Illinois, filed on June 25, 1991).

Since 1973, all attorneys in the State of Illinois pursuant to Illinois Supreme Court Rule 756(a), have been required to pay an annual registration fee to the Commission to fund the State's attorney registration and disciplinary system. (107 Ill.2d R. 756(a) (1985)). The collection of these fees and the registration of attorneys is under the administrative supervision of the Commission pursuant to Illinois Supreme Court Rule 751(a). (107 Ill.2d R. 751(a) (1985)). The Administrator is charged with representing the Commission in all proceedings regarding the registration of

attorneys pursuant to Illinois Supreme Court Rule 752(e). (107 Ill.2d. R. 752(e) (1985)).

Registration proceedings include the prosecution of attorneys for contempt pursuant to Illinois Supreme Court Rule 756(d) for engaging in the unauthorized practice of law while removed from the Master Roll of Attorneys for failing to pay the annual registration fee. (107 Ill.2d R. 756(d) (1985)). Therefore, the Commission by its Administrator, was the initial complainant in this matter.

Petitioner has presented no argument in support of the inclusion of the individual members of the Supreme Court of Illinois, the adjudicative body in this situation, and the individual members of the Commission as party-respondents to this proceeding. Supreme Court Rule 12.4 provides that all parties to the proceeding in the court whose judgment is sought to be reviewed shall be parties in this Court. The Commission can and should be considered as the proper party-respondent to this proceeding.

This brief in response is filed on behalf of the Commission and its individual members as set forth in the petition for certiorari. The Commission received notice of the petition on September 23, 1991. Counsel for the individual members of the Supreme Court of Illinois has informed the Commission that the Court will file a separate brief in opposition concerning this issue and in support of the substantive arguments presented in the body of this brief.

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Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENTS' BRIEF IN OPPOSITION

Respondent individual members of the Attorney Registration and Disciplinary Commission and the Commission, respectfully pray the this Court enter an order denying Petitioner's *Petition for Writ of Certiorari to the Supreme Court of Illinois* filed in this cause.

STATEMENT OF THE CASE

On March 1, 1989 Petitioner's name was removed from the Master Roll of Attorneys authorized to practice law in the State of Illinois. Petitioner's name was removed because he failed to pay the 1989 attorney registration

fee to the Commission as required by Illinois Supreme Court Rule. Petitioner subsequently notified the Commission that his failure to pay the fee was intentional. The Administrator of the Commission then filed a petition in the Supreme Court of Illinois requesting that a rule to show cause issue to Petitioner why he should not be suspended from the practice of law for intentionally refusing to pay the registration fee.

The Commission subsequently received information which indicated that Petitioner was engaging in the unauthorized practice of law while his name was removed from the Master Roll of Attorneys. The Administrator of the Commission then filed a petition in the Supreme Court of Illinois requesting that a second rule to show cause issue to Petitioner why he should not be found in indirect criminal contempt of the Court for engaging in the unauthorized practice of law. Petitioner responded to the rule with State and Federal Constitutional challenges to the authority of the Court to collect an annual attorney registration fee.

The Supreme Court of Illinois found Petitioner's constitutional challenges to be without merit. The Court also found that Petitioner had engaged in the unauthorized practice of law. The Court then convicted and sentenced Petitioner on a charge of indirect criminal contempt. Petitioner has now filed his petition for writ of certiorari with this Court.

The facts concerning Petitioner's conduct are largely uncontested. The facts are almost entirely set forth in a stipulation entered into by Petitioner and the Commission. This stipulation was entered into evidence during an evidentiary hearing held before Illinois Circuit Court Judge J. David Bone on August 6, 1990. (*Stipulation as to Facts and Admissibility of Documents (Stip.)*, Bone trans., 8/6/90, p. 7). This stipulation is reprinted as Appendix A to this brief, minus the referenced exhibits.

Petitioner's Removal from the Master Roll of Attorneys

Petitioner was admitted to the practice of law in the State of Illinois on May 16, 1949. (*Stip.*, par. 3).

On or about December 22, 1988, Petitioner received a notice from the Commission informing him that he was required to register and pay the 1989 annual attorney registration fee in the amount of $140 to the Commission on or before February 1, 1989.[1] (*Stip.*, par. 6). Petitioner neither registered nor paid the 1989 annual attorney registration fee as required. (*Stip.*, par. 7).

On or about February 20, 1989, Petitioner received a letter from the Commission notifying him that his registration and the 1989 annual attorney registration fee were past-due and that if he did not register and pay the fee on or before March 1, 1989, his name would be removed from the Master Roll of Attorneys. (*Stip.*, par. 8). Petitioner failed to register or pay the fee, so on March 1, 1989 his name was removed from the Master Roll of Attorneys authorized to practice law in the State of Illinois pursuant to Illinois Supreme Court Rule 756(d).[2] (107 Ill.2d R. 756(d) (1985)). (*Stip.*, par. 9).

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[1] Attorneys in Illinois are required by Illinois Supreme Court Rule 756(c) to notify the Administrator of the Commission of any change of address. (107 Ill.2d R. 756(c) (1985)). The registration form forwarded to attorneys provides them with an opportunity to correct their address, as well as certify that they are paying the appropriate amount for their registration fee as required by Illinois Supreme Court Rule 756(a). (107 Ill.2d R. 756(a) (1985)).

[2] Illinois Supreme Court Rule 756(d) provides that on the first of February of each year, the Administrator shall remove from the Master Roll of Attorneys the name of any person who has not registered for that year. (107 Ill.2d R. 756(d) (1985)). In 1989, the registration forms that the Administrator is required to mail to each attorney on the Master Roll were late being processed.

(Footnote continued on following page)

On or about March 22, 1989, Respondent received a letter from the Commission notifying him that his name had been removed from the Master Roll of Attorneys. (*Stip.*, par. 10). On or about May 2, 1989, Petitioner forwarded a letter to the Commission stating, "A recent Fourth District Appellate Court Case—No. 4-88-0355—informs me that I do not have to be registered with your office to practice law in the State of Illinois."[3] (*Stip.*, par. 11).

On or about May 11, 1989, the Commission wrote to the Chief Judge of the Circuit Court situated where Petitioner's law office had previously been located and informed him that Petitioner's name had been removed from the Master Roll of Attorneys on March 1, 1989. (*Stip.*, par. 12).

On or about June 6, 1989, Petitioner received a letter from the Commission notifying him that the was not excused from registering or paying the 1989 annual attorney registration fee and accrued penalties.[4] Enclosed with

[2] *continued*
Therefore, attorneys were granted a 30-day extension before their names were removed from the Master Roll for failure to register and pay the annual registration fee. This explains why Petitioner's name was not removed from the Master Roll until March 1, 1989.

[3] Petitioner was referring to the opinion of the Appellate Court of Illinois, Fourth District, in *Powell, et al. v. Western Illinois Electric Cooperative, et al.*, 180 Ill. App.3d 581, 536 N.E.2d 231 (Ill. App. 4 Dist.) (*petition for leave to appeal denied*, 127 Ill.2d 640, 545 N.E.2d 129 (1989)) (*cert. denied*, 110 S. Ct. 1132 (1990)). The Appellate Court's decision in *Powell* had nothing to do with the registration and licensing of attorneys in the State of Illinois. In *Powell*, the Appellate Court simply found that the attorney-client privilege applies between an Illinois corporate client and an attorney who represents the corporation, but is not licensed to practice law in the State.

[4] In the letter dated June 6, 1989, Jerome Larkin, Deputy Administrator of the Commission, informed Petitioner:

> I have reviewed the opinion of the Illinois Appellate Court in *Powell, et al. v. Western Illinois Electric Cooperative, et al.*,

(Footnote continued on following page)

the letter was a 1989 registration application. (*Stip.*, par. 13). On or about June 12, 1989, the Commission received a letter from Petitioner. The 1989 registration application was completed and attached to the letter. Petitioner did not forward the 1989 annual attorney registration fee.[5] (*Stip.*, par. 14).

Suspension Proceedings in the Supreme Court of Illinois

On July 31, 1989 the Administrator of the Commission filed with the Supreme Court of Illinois an amended report pursuant to Illinois Supreme Court Rule 756 (107 Ill. 2d R. 756 (1985)), concerning Petitioner's failure to pay

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[4] *continued*

No. 4-88-0355 (4th District 1989). The opinion does not support your position that you are not obligated to pay the registration fee required by Supreme Court Rule 756(a).

The appellate court was not faced with the issue of the obligation of an Illinois attorney to pay the registration fee under Supreme Court Rule 756 and did not purport to interfere with the inherent and exclusive jurisdiction of the Supreme Court to regulate the legal profession. See *In re Day*, 181 Ill. 73, 54 N.E. 646 (1899).

The appellate court's decision related to a narrow issue: whether the communication between an Iowa attorney and a client located in Illinois would be accorded the protection of the attorney-client privilege in litigation in an Illinois court. The court was not presented and did not find it necessary to consider the charge that the Iowa attorney was engaged in the unauthorized practice of law in Illinois.

(*Stip.*, par. 13, Exhibit 8). Apparently, Petitioner has abandoned his argument that the *Powell* decision is controlling in this case. Petitioner has not included this argument in his petition for certiorari.

[5] In his letter dated June 12, 1989, Petitioner questions the authority of the Supreme Court of Illinois to "exercise governmental power to collect money to put in a private fund for any purpose." Petitioner maintains that he could only be removed from the Master Roll of Attorneys for "malconduct". Therefore, he did not intend to pay the 1989 annual registration fee as required by Supreme Court Rule 756. (*Stip.*, par. 14, Exhibit 9).

the 1989 annual attorney registration fee and accrued penalties. No specific conduct of Petitioner was reported to the Court other than Petitioner's failure to pay the 1989 annual attorney registration fee and penalties with his registration. The amended report requested that the Court issue a rule to show cause why Petitioner should not be suspended from the practice of law for his willful failure to comply with Rule 756. (*Stip.*, par. 15).

On August 7, 1989 the Supreme Court of Illinois ruled Petitioner to show cause, in writing, on or before September 11, 1989, why he should not be suspended from the practice of law until further order of the Court for failing to comply with the requirements of Supreme Court Rule 756. (*Stip.*, par. 16). On August 18, 1989 a copy of the rule to show cause was personally served on Petitioner. (*Stip.*, par. 17).

On September 11, 1989 Petitioner filed an answer to the rule to show cause. On September 22, 1989 Petitioner filed an amendment to his answer. In his answers, Petitioner formally raises his constitutional challenges concerning due process and the Supreme Court of Illinois' authority to remove his name from the Master Roll of Attorneys for non-payment of the 1989 annual attorney registration fee. (*Stip.*, par. 18).

Petitioner also attached to his answer filed on September 11, 1989, a cashier's check in the amount of $230 made payable to the "Clerk of (the) Supreme Court of Illinois". Petitioner alleged that the proceeds of this check represented payment of the past-due 1989 annual attorney registration fee and accrued penalties. (*Stip.*, par. 18).

On September 15, 1989 the Administrator of the Commission filed his response to Petitioner's answer. The Administrator requested that the Supreme Court enter an order enforcing its rule to show cause and suspend Peti-

tioner from the practice of law until such time as he complied with the provisions of Illinois Supreme Court Rule 756. (*Stip.*, par. 19).

On September 27, 1989 the Supreme Court of Illinois entered an order directing the Clerk of the Court to return to Petitioner his cashier's check for $230. The Court continued its rule to show cause to and including October 4, 1989, to give Petitioner the opportunity to make payment of the 1989 annual attorney registration fee and accrued penalties to the Commission. (*Stip.*, par. 20).

On October 3, 1989 Petitioner unilaterally deposited the cashier's check which was returned to him into an escrow account with a corporation which was not affiliated with the Commission. (*Stip.*, par. 21). On October 4, 1989 Petitioner filed a copy of the escrow agreement concerning the cashier's check with the Supreme Court of Illinois. (*Stip.*, par. 22).

Facts Concerning the Unauthorized Practice of Law

On February 19, 1988 Respondent filed in the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois, a *Petition for Letters of Administration* on behalf of Helen B. Halbert, the spouse and sole surviving heir of William A. Halbert. Mr. Halbert passed away on February 10, 1988. The Clerk of the Circuit Court docketed the matter as Case No. 88-P-97. (*Stip.*, par. 4). The estate was assigned to Circuit Judge Simon L. Friedman.[6]

On February 19, 1988 an order was entered by Judge Friedman appointing Ms. Halbert the independent administrator of her late husband's estate. (*Stip.*, par. 5). Peti-

[6] Petitioner was a high school classmate of Judge Friedman's and the two have known each other for 55 years. (Bone trans., 8/6/90, p. 13).

tioner remained the attorney of record for the administrator from the date the estate was opened, until October 27, 1989, the date the estate was closed. (Bone trans., 8/6/90, p. 7, Exhibit 2; *Report of Hearings Conducted Pursuant to Order Entered May 30, 1989* (Report), M.R. 5916 in the Supreme Court of Illinois, filed by Judge Bone on October 4, 1990, par. 7; Pet.'s Appendix F, p. F3).

On March 1, 1989 Petitioner's name was removed from the Master Roll of Attorneys authorized to practice law in the State of Illinois as set forth above. (*Stip.*, par. 9). Petitioner received notice that his name had been removed from the Master Roll on or about March 22, 1989. (*Stip.*, par. 10).

On or about August 9, 1989, Petitioner inquired of Judge C. Joseph Cavanagh, the Chief Judge of the Seventh Judicial Circuit, the Circuit in which Case No. 88-P-97 was pending, whether Petitioner would be permitted to practice law in Judge Cavanagh's courtroom. Judge Cavanagh replied that Petitioner would not be allowed to appear in his courtroom because Petitioner's name had been removed from the Master Roll of Attorneys. (Bone trans., 8/6/90, pp. 9-11; *Report*, par. 7; Pet.'s Appendix F, p. F3).

Soon thereafter, Ms. Halbert requested that the proceedings in Case No. 88-P-97 be closed. Petitioner informed Ms. Halbert that he might not be able to close the estate because of the problems with the 1989 annual attorney registration fee as set forth above, but he would find out. (Bone trans., 9/7/90, pp. 24-25; *Report*, par. 7; Pet.'s Appendix F, p. F3). Petitioner then advised Ms. Halbert on the procedure for closing the estate, completed the final report for Ms. Halbert's approval and signature, and received Ms. Halbert's check in the amount of $39 for closing costs. (Bone trans., 9/7/90, pp. 32-35; *Report*, par. 7; Pet.'s Appendix F, p. F3).

On or about October 19, 1989, Petitioner appeared in Judge Friedman's chambers with a file related to Petitioner's dispute with the Commission. Judge Friedman refused to review the file because he was already aware of the facts of the situation. Judge Friedman had been following the dispute through articles which had appeared in a daily legal newspaper, the *Chicago Daily Law Bulletin*, printed in Chicago, Illinois. (Bone trans., 8/6/90, pp. 17-18; *Report*, par. 7; Pet.'s Appendix F, p. F4).

On October 20, 1989 Petitioner appeared at the office of the Clerk of the Circuit Court of Sangamon County, Probate Division, and delivered for filing in Case No. 88-P-97, the final report signed by Ms. Halbert, tendered Ms. Halbert's check in the amount of $39 for closing costs, and additionally filed an estate closing letter from the Internal Revenue Service and a certificate of discharge and determination of tax issued by the (Illinois) Attorney General. (*Stip.*, par. 23; *Report*, par. 7; Pet.'s Appendix F, p. F4).

On the same day (October 20), Petitioner reappeared before Judge Friedman. Judge Friedman's docket entry in Case No. 88-P-97 states in relation to Petitioner's appearance, "On October 20, 1989, Alfred H. Greening (Petitioner) appeared to obtain an approval of final accounting in this estate. The Court informed him he was not allowed to practice before it until such time as he got his matter with the Attorney Registration and Disciplinary Commission straightened out."[7] (Bone trans., 8/6/90, p. 17; *Stip.*, par. 24; *Report*, par. 7; Pet.'s Appendix F, p. F4).

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[7] At the evidentiary hearing before Judge Bone on August 6, 1990, Judge Friedman testified that when Petitioner first appeared before him on October 20, 1989, Petitioner related that "he had paid and registered" with the Commission. Judge Friedman then told Petitioner that he had paid the attorney registration fee "to the wrong people," that he had paid the Supreme Court of Illinois, when he should have paid it to the Commission. (Bone trans., 8/6/90, pp. 19-20; *Report*, par. 7).

Petitioner then reported to Ms. Halbert that he was unable to close the estate. On Petitioner's recommendation and with Ms. Halbert's approval, Petitioner retained the services of another attorney who entered her appearance in the estate, obtained the Court's approval of the final report and received a discharge of the administrator. (Bone trans., 9/7/90, pp. 24-26; *Report*, par. 7; Pet.'s Appendix F, pp. F4-F5).

Indirect Criminal Contempt Proceedings in the Supreme Court of Illinois

On February 7, 1990 the Administrator of the Commission filed his *Supplemental Report* in *In re Greening*, M.R. 5916 in the Supreme Court of Illinois. The report alleged that Petitioner had engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989. The Administrator requested that Petitioner be ruled to show cause why he should not be held in indirect criminal contempt pursuant to Illinois Supreme Court Rule 756(d). (107 Ill.2d R.756(d) (1985)). (*Stip.*, par. 31).

On March 26, 1990 the Supreme Court of Illinois entered an order ruling Petitioner to show cause, in writing, on or before April 30, 1990, why he should not be held in indirect criminal contempt of the Court for engaging in the unauthorized practice of law. (*Stip.*, par. 33). On April 11, 1990 a copy of the Court's rule to show cause was personally served on Petitioner. (*Stip.*, par. 34).

On April 30, 1990 Respondent filed his answer to the Supreme Court of Illinois' rule to show cause. Petitioner again raised objections of denial of due process under the United States Constitution and a number of state constitutional and legal issues. (*Stip.*, par. 35).

On May 30, 1990 the Supreme Court of Illinois entered an order continuing its rule to show cause issued to Peti-

tioner. The Court directed Petitioner and a representative of the Commission to appear before Judge Bone for the purpose of an evidentiary hearing. Judge Bone was directed to make findings of fact concerning the issues formed by the Commission's supplemental report and Petitioner's answers thereto. (*Stip.*, par. 36).

The facts concerning the hearings held before Judge Bone and the Supreme Court of Illinois are accurately set forth in the petition for writ of certiorari. (*Petition for Writ of Certiorari* (Petition), pp. 6-12). The only addition the Commission would provide is that on July 5, 1990, prior to any evidence being taken by Judge Bone, the Administrator filed on behalf of the Commission, a specification of factual allegations which the Administrator intended to prove beyond a reasonable doubt during the evidentiary hearings. (*Administrator's Specification of Factual Allegations*, M.R. 5916 in the Supreme Court of Illinois, filed on July 5, 1990).

The Administrator agreed to limit his evidence of Petitioner's conduct to the matters set forth in the specification. (Bone trans., 6/21/90, pp. 30-31). A true and correct copy of the specification is reprinted as Appendix B to this brief.

Judge Bone filed his report with the Supreme Court of Illinois after the conclusion of the hearings before him. (*Report*, Pet.'s Appendix F). The Court reviewed the report and found that the Administrator on behalf of the Commission had proven beyond a reasonable doubt that Petitioner had engaged in the unauthorized practice of law after his name had been removed from the Master Roll of Attorneys on March 1, 1989. The Court then enforced its rule to show cause issued on March 26, 1989 as set forth above, and held Petitioner in indirect criminal contempt of the Court for engaging in the unauthorized prac-

tice of law. (*Order*, M.R. 5916 in the Supreme Court of Illinois, filed on May 29, 1991; Pet.'s Appendix A, p. A1).

In its order sentencing Petitioner, the Supreme Court of Illinois reaffirmed its finding that Petitioner had engaged in the unauthorized practice of law. Further, the Court found that Petitioner had performed the following acts in Case No. 88-P-97 after March 1, 1989, which constituted the practice of law:

> 1. Advised the estate administrator of the proper procedures for closing an estate under the Probate Act of 1975 (Ill. Rev. Stat. 1989, Ch. 110½, par. 1-1 *et seq.*);
>
> 2. Prepared a final accounting presumably as required by Section 24-1 of the Probate Act of 1975 (Ill. Rev. Stat. 1989, Ch. 110½, par. 24-1); and
>
> 3. After obtaining the signature of the estate administrator on the final accounting, presented it to Judge Friedman.

(*Order*, M.R. 5916 in the Supreme Court of Illinois, filed on June 25, 1991; Pet.'s Appendix B, pp. B1-B2).

SUMMARY OF ARGUMENT

Petitioner's argument that he was denied due process of law when his name was removed from the Master Roll of Attorneys is without merit. The decisions of this Court do not require that a hearing be held when a license granted by the State as a right is suspended or rescinded because of the failure of the licensee to comply with an administrative requirement imposed as a prerequisite to retaining the license. A hearing is only required when a license is suspended or revoked for misconduct.

The Supreme Court of Illinois can lawfully collect an annual registration fee from attorneys admitted to the practice of law in the State. Petitioner did not fulfill his

obligation to pay the fee. The fee was an administrative requirement imposed as a prerequisite to retaining his license. Therefore, a hearing was not required when Petitioner's name was removed from the Master Roll.

Petitioner's arguments that he was denied due process of law during his prosecution for indirect criminal contempt of court are also without merit. Due process requires that a defendant in an indirect criminal contempt proceeding be provided with notice of the charge against him, an opportunity to defend, and a fair hearing. Petitioner was afforded each of the elements. Therefore, his right to due process was not violated.

ARGUMENT

I.

THE SUPREME COURT OF ILLINOIS CAN SUMMARILY REMOVE THE NAME OF AN INDIVIDUAL FROM THE MASTER ROLL OF ATTORNEYS AUTHORIZED TO PRACTICE LAW IN THE STATE FOR FAILING TO COMPLY WITH AN ADMINISTRATIVE REQUIREMENT, THE PAYMENT OF AN ANNUAL REGISTRATION FEE, ESTABLISHED IN RELATION TO THE COURT'S INHERENT AUTHORITY TO REGULATE THE PRACTICE OF LAW.

Petitioner's argument that he was denied due process of law when his name was removed from the Master Roll of Attorneys is without merit. The decisions of this Court do not require that a hearing be held when a license granted by the State as a right is suspended or rescinded because of the failure of the licensee to comply with an administrative requirement imposed as a prerequisite to retaining the license. A hearing is only required when a license is suspended or revoked for misconduct.

The Supreme Court of Illinois can lawfully collect an annual registration fee from attorneys admitted to the

practice of law in the State. Petitioner did not fulfill his obligation to pay the fee. The fee was an administrative requirement imposed as a prerequisite to retaining his license. Therefore, a hearing was not required when Petitioner's name was removed from the Master Roll.

A. The Supreme Court of Illinois can lawfully collect an annual attorney registration fee from an individual admitted to practice law in the State based upon the Court's inherent authority to regulate the practice of law.

The Supreme Court of Illinois has the inherent authority to regulate the practice of law within the boundaries of the State. Inherent in this authority, though it is not directly conferred in the State's Constitution, is the power to prescribe the qualifications which will entitle an individual to be admitted and to remain a member of the bar. (*In re Day*, 181 Ill. 72, 54 N.E. 646 (1899); *People v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901 (1931)). In regard to this authority, this Court has held,

> We recognize that the states have a compelling interest in the practice of professions within their boundaries, and as part of their power to protect the public . . . they have broad power to establish standards for licensing practitioners and regulating the practice of professions * * * The interest of the states in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been "officers of the courts." (Citations omitted.)

(*Goldfarb v. Virginia State Bar*, 421 U.S. 773, 793 (1975)).

In *Lathrop v. Donahue*, 367 U.S. 820 (1960), this Court held that a State could constitutionally require that all attorneys admitted to practice be members of the State's private integrated bar association and be required to pay its annual dues. The Court found that each state has a legitimate interest in raising the quality of the services

of the attorneys who practice within their boundaries. (*Lathrop*, at 843).

In *Lathrop*, one of the purposes of the bar association at issue was to enforce disciplinary obligations and prosecute the misconduct of attorneys. The Court held that the costs of improving the profession in this fashion should be shared or borne by the subjects and beneficiaries of the regulatory program, the attorneys, even though the association also engaged in other legislative and political activity.[8] (*Lathrop*, at 843).

Illinois does not have an integrated bar association. The registration of attorneys and the prosecution of attorney misconduct has been delegated to the Commission by the Supreme Court of Illinois through its rules. (107 Ill.2d R. 750 *et seq.*, (1985)). The fund created by the Commission's collection of the annual attorney registration fee is entirely earmarked for the registration and discipline of attorneys. Clearly, pursuant to this Court's decision in *Lathrop*, the Supreme Court of Illinois has the authority to require that each attorney pay an annual registration fee and that fee be paid to the Commission.

B. A hearing must be available to a licensee if a license granted by the State as a right is revoked or suspended for cause.

The Court has held that the practice of law is a fundamental right. (*Supreme Court of New Hampshire v. Piper*, 470 U.S. 272 (1985)). A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or

[8] The Court recently reaffirmed in a unanimous opinion the rule in *Lathrop* that a state can require the members of its bar to pay an annual registration fee or bar dues for the purpose of supporting an attorney registration and disciplinary system. (*Keller v. State Bar of California*, 110 S. Ct. 2281 (1990)).

Equal Protection Clauses of the Fourteenth Amendment. (*Schware v. Board of Bar Examiners*, 353 U.S. 232 (1956)). Petitioner relies on these principles and this Court's decisions in *Bell v. Burson*, 402 U.S. 535 (1971) and *Berry v. Barchi*, 443 U.S. 55 (1979) to support his argument that he was denied his right to due process when his name was removed from the Master Roll of Attorneys without an opportunity for a hearing. Petitioner is correct in maintaining that a hearing is required when a license held as a right is suspended or revoked for misconduct, as was the case in both *Bell* and *Berry*.

In *Bell*, the Georgia Motor Vehicle Safety Act was reviewed. The Act provided that the motor vehicle registration and driver's license of an uninsured motorist involved in an accident was to be suspended, unless the motorist posted security to cover the amount of damages claimed by the aggrieved parties in reports of the accident. An administrative hearing was provided prior to the suspension, but by statute, the hearing excluded all consideration of the motorist's fault or liability for the accident. (*Bell*, at 537-538).

The Court held that a hearing on liability would be required, and held that "procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed (the amount of the security posted) against the licensee." (*Bell*, at 540).

In *Berry*, the Court reviewed the suspension by the New York Racing and Wagering Board of a licensed horse trainer who had violated standards of conduct promulgated by the State. The standards provided that a trainer was forbidden to permit a horse in his custody to start a race if he knew or should have known or had cause to believe that a horse trained by him had been drugged. A horse trained by the licensee was found to have been

drugged. The trainer's license was then summarily suspended pursuant to the standards of conduct and a statutory presumption that the person responsible for the horse (the trainer) had administered the drugs. The licensee was afforded a post-suspension hearing on culpability, but no requirements for timeliness were present and the license was to remain suspended, pending the disposition of the hearing. (*Berry*, at 57-61).

The Court rejected the licensee's argument that he was denied due process guarantees when he was summarily suspended. The Court found, though, that the licensee was entitled to a prompt post-suspension hearing and resolution on the issue of the trainer's culpability. (*Berry*, at 63-64). (*See also, Parratt v. Taylor*, 451 U.S. 527 (1981)).

The decisions above both concern a licensee whose license had been revoked for cause or misconduct. It is clear pursuant to these decisions that a pre-suspension hearing or a prompt post-suspension hearing would be required if an attorney's license was suspended or he was disbarred for attorney misconduct.[9] Petitioner's removal from the Master Roll of Attorneys was not related to attorney misconduct. Therefore, no hearing was required as set forth below.

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[9] An attorney charged with misconduct in Illinois is afforded a full hearing and review procedure pursuant to the requirements of Illinois Supreme Court Rule 753, prior to being suspended or disbarred for engaging in attorney misconduct. (107 Ill.2d R. 753 (1985)). An attorney may be suspended on an interim basis while charges of serious misconduct are pending against him, but the attorney is still afforded an opportunity to respond to the charges pursuant to Illinois Supreme Court Rule 774(a), prior to an order of suspension being entered. (107 Ill.2d R. 774(a) (1985)).

C. A hearing does not have to be available to a licensee if a license granted by the State as a right is revoked or suspended due to the failure of the licensee to comply with an administrative requirement imposed as a prerequisite to obtaining or retaining the license.

It is clear that an attorney has a property interest in his law license, "a legitimate claim of entitlement." (*Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)). An attorney may retain that property interest if he complies with all administrative requirements reasonably established by the State. (*See, Reed v. Village of Shorewood*, 704 F.2d 943, 948-949 (7th Cir. 1983)).

In *Reed*, an Illinois liquor license holder argued that his right to due process was denied when the Village of Shorewood informed him that his license would not be renewed, not for cause, but simply because the village voted to issue three licenses instead of four. The Court held that if undemanding criteria for renewal are set, a licensee is entitled to the renewal of his license if he meets those criteria. (*Reed*, at 948-949).

An attorney may abandon his property interest in his license if he does not comply with reasonable criteria. A hearing is not required for license suspension or non-renewal, if these criteria are not met. (*See, Vaden v. Village of Maywood*, 809 F.2d 361, 366 (7th Cir.), *cert. denied*, 482 U.S. 908 (1987)).

In *Vaden*, the operator of a mobile food vending business was not issued a vending license, a recognizable property right, by the Village of Maywood, Illinois, because she had not obtained a certificate of registration from a State taxing authority. The issuance of a certificate was an administrative requirement for obtaining the village license. The Court held the woman's rights were not unconstitutionally denied and a hearing was not required concerning the village's failure to issue a license because

the certificate was a prerequisite required by the State before the woman could even lawfully open her business. Therefore, her failure to obtain the certificate operated as an abandonment of her property interest in the license. (*Vaden*, at 366).

A hearing is also not required if a licensee is afforded meaningful post-deprivation remedies. If the damage alleged by the licensee concerning the loss of his license may be adequately addressed in some lawful forum which will provide the requisite due process protection, a hearing is not required. (*See, Easter House v. Felder*, 879 F.2d 1458, 1475-1476 (7th Cir. 1989) (*cert. gr. and vac.*, 110 S. Ct. 1314) (*aff'd on remand*, 910 F.2d 1387 (1990)) (*cert. denied*, 111 S. Ct. 783 (1991)).

In *Easter House*, an adoption agency alleged it was denied due process of law based upon the State of Illinois' refusal to grant the agency an extension of its license. The Court found that because the agency could seek adequate state court remedies concerning the damages it alleged, no hearing was required prior to its license being revoked. (*Easter House, supra). (See also, Thornton v. Barnes*, 890 F.2d 1380 (7th Cir. 1989)).

The preceding decisions demonstrate that a hearing does not have to be available to a licensee if a license granted by the State as a right is revoked or suspended due to the failure of the licensee to comply with an administrative requirement imposed as prerequisite to obtaining or retaining the license. This rule is especially persuasive when the licensee is provided an adequate and meaningful opportunity to comply with the administrative requirement and have his license reinstated as a matter of course.

D. Petitioner failed to comply with an administrative request imposed as a prerequisite to retaining his license to practice law, the payment of the 1989 attorney registration fee, therefore, no hearing had to be available when his name was removed from the Master Roll of Attorneys.

The facts concerning Petitioner's removal from the Master Roll of Attorneys are clear. Petitioner intentionally failed to pay the 1989 attorney registration fee and was removed from the Master Roll because of his failure to pay. As argued above, there is no question that the Supreme Court of Illinois could require Petitioner to pay an annual fee to support the State's attorney registration and disciplinary system. It is clear that this fee and the required registration are administrative prerequisites which Petitioner had to satisfy in order to have his license reinstated.

Illinois Supreme Court Rule 756(e) provides that:

> An attorney whose name has been removed from the master roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying the registration fee prescribed for the period of his suspension, plus the sum of $10 per month for each month that such registration fee is delinquent.

(107 Ill.2d R. 756(e) (1985) (as amended, effective December 1, 1988)). The rule on its face is probative of the fact that the payment of the fee is a mere administrative requirement. This rule provided Petitioner with a painless remedy to reinstate his license. The facts indicate that Petitioner simply abandoned his interest in his license by not paying the fee.[10]

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[10] Petitioner filed an action in Federal District Court seeking to enjoin his contempt prosecution and raising many of the same arguments he is pursuing in his petition for certiorari. Judge Mills,

(Footnote continued on following page)

Respondent was not entitled to a hearing before his removal from the Master Roll of Attorneys or a post-removal hearing concerning his failure to pay.[11] As argued above, no hearing is required when a license is suspended merely for failure to comply with an administrative requirement. (*See*, Section I(C), *supra).*

Respondent was also not entitled to a hearing concerning his arguments that the Supreme Court of Illinois cannot, pursuant to the Constitution of the State of Illinois and other state laws, collect a mandatory registration fee from attorneys to support an attorney registration and disciplinary system. (*See*, *Petition*, Sec. I(b), pp. 16-18).

Several state court remedies are available to Petitioner to contest the validity of his claims.[12] Petitioner will be free to seek the due process protection he alleges he

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[10] *continued*
speaking in relation to Petitioner's opportunity to reinstate his license, found: "The fact that this avenue of relief is open to (Petitioner) takes this case out of the category of those arbitrary deprivations lacking due process of law—the redemption provision of S. Ct. R. 756(e) could have been Greening's salvation, but for his own obstinence." (*Greening v. Moran, et al.*, 739 F. Supp. 1244, 1252-1253 (C.D. Ill. 1990)).

[11] Petitioner contends that he was foreclosed from addressing the issue of payment before the Supreme Court of Illinois. Petitioner argues that he did make payment when he tendered his check to the Court. Petitioner alleges that the Court ignored his payment and invoked criminal contempt proceedings to punish him. (*See*, *Petition*, p. 18). Petitioner's arguments are without merit. Petitioner has admitted that the Court returned his check to him with the express direction to make his payment to the Commission as required by Illinois Supreme Court Rule 756(a). (*Stip.*, par. 20) In response to this directive, Petitioner unilaterally deposited his check into an escrow account. Petitioner did not pay the Commission as ordered by the Court. (*Stip.*, par. 21). Petitioner cannot in the face of this evidence argue that he made proper payment.

[12] While not a complete list of the state remedies available to Petitioner to address his claims, Petitioner could invoke the authority of the Supreme Court of Illinois and file an original action in mandamus or prohibition pursuant to Illinois Supreme Court Rule 381. (107 Ill.2d R. 381 (1985)).

has not been afforded. Petitioner will be able to litigate his claims no matter how dubious they are based upon the current status of the law.

Petitioner's claims are dubious because the decisions of this Court in *Lathrop* and *Keller* are controlling. There is no question that the Supreme Court of Illinois in exercising its inherent authority to regulate the practice of law can require and collect an annual attorney registration fee to support its attorney registration and disciplinary system. (*See*, Section I(A), *supra)*. Therefore, Petitioner's claims will be unsuccessful no matter which forum he chooses.[13]

Petitioner's right to procedural due process pursuant to the Fourteenth Amendment has not been violated because a hearing was not afforded him when his name was removed from the Master Roll of Attorneys. The fee Petitioner was required to pay was an administrative requirement. Therefore, no hearing was required.

II.

PETITIONER WAS AFFORDED DUE PROCESS GUARANTEES DURING HIS PROSECUTION FOR INDIRECT CRIMINAL CONTEMPT OF THE SUPREME COURT OF ILLINOIS FOR ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW AFTER HIS NAME WAS REMOVED FROM THE MASTER ROLL OF ATTORNEYS AUTHORIZED TO PRACTICE LAW IN THE STATE.

Petitioner's arguments that he was denied due process of law during his prosecution for indirect criminal con-

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[13] As noted in footnote 10, *supra*, Petitioner did file an action pursuant to 42 U.S.C. Sec. 1983 in the Federal District Court praying for damages and injunctive relief concerning his contempt prosecution. Petitioner raised many of the same State and Federal Constitutional arguments presented here. Petitioner's claims were all denied and his case was dismissed. (*Greening v. Moran, et al., supra*). Petitioner has appealed the District Court's decision to the Seventh Circuit Court of Appeals, No. 90-3784.

tempt of court are without merit. Due process requires that a defendant in an indirect criminal contempt proceeding be provided with notice of the charge against him, an opportunity to defend, and a fair hearing. Petitioner was afforded each of the elements. Therefore, his right to due process was not violated.[14]

A. Definition of criminal contempt.

The Supreme Court of Illinois has defined criminal contempt of court as "conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute." (*People v. Javaras*, 51 Ill.2d 296, 299, 281 N.E.2d 670, 671 (1972)).

Direct criminal contempt is contemptuous conduct occurring "in the very presence of the judge, making all of the elements of the offense matters within his own personal knowledge." (*People v. Harrison*, 403 Ill. 320, 323-324, 86 N.E.2d 208, 210 (1949)). Direct contempt is restricted to acts and facts seen and known by the court. No matter based upon opinion, conclusion, presumption or inference should be considered. (*People v. Loughran*, 2 Ill.2d 258, 263, 118 N.E.2d 310, 313 (1954)).

Indirect criminal contempt is contemptuous conduct which in whole or in an essential part occurred out of the presence of the court. Therefore, it is dependent for its proof upon evidence of some kind. (*People v. Sherwin*, 353 Ill. 525, 528, 187 N.E. 441, 442 (1933)). "Where the judge does not have full personal knowledge of every element of the contempt and its demonstration depends on the

[14] It is important to note at the outset that a defendant in a criminal contempt proceeding is not afforded all of the safeguards surrounding one accused of a crime. (*People v. Barasch*, 21 Ill.2d 407, 410, 173 N.E.2d 417, 419 (1961)).

proof of facts, of which the court would have no judicial notice, the contempt is held to be indirect." (*People v. L.A.S.*, 111 Ill.2d 539, 543, 490 N.E.2d 1271, 1273 (1986) (*citing, People v. Harrison, supra*).

Petitioner was prosecuted on a charge of indirect criminal contempt. The procedural due process to be provided in such a proceeding is set forth below.

B. Process which is due in indirect criminal contempt proceeding.

Direct criminal contempt may be found and punished summarily because all of the elements are before the court and come within its immediate knowledge. Therefore, the usual safeguards of procedural due process are not required. (*People v. Javaras*, 51 Ill.2d at 299, 281 N.E.2d at 672).

Indirect criminal contempt requires proof of matters outside the immediate knowledge of the court. Therefore, the contemnor is entitled to procedural due process safeguards. These safeguards include notice, opportunity to answer, and a hearing.[15] (*People v. L.A.S.*, 111 Ill.2d at 544, 490 N.E.2d at 1273).

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[15] The required procedural due process for criminal contempt proceedings in the Federal District Courts has been codified. In direct criminal contempt proceedings, Fed. R. Crim. P. 42(a) provides that a contemnor may be punished summarily if the judge saw or heard the conduct and it was committed in the actual presence of the court. In indirect criminal proceedings Fed. R. Crim. P. 42(b) provides:

> A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the U.S. attorney appointed by the court for that purpose, by

(Footnote continued on following page)

C. Petitioner was afforded due process guarantees during his prosecution for indirect criminal contempt of the Supreme Court of Illinois.

Petitioner has argued that his right to due process of the law pursuant to the Fourteenth Amendment was violated because he was not given an adequate opportunity to defend himself. Petitioner argues that procedural due process was denied because no hearing was provided and Judge Bone did not rule on his constitutional arguments, the Supreme Court of Illinois did not allow him to brief his constitutional arguments and he was afforded no right to an appeal. (*See, Petition*, pp. 19-21, 26-27).

Petitioner also argues that he was denied due process because he did not receive a fair hearing. Petitioner argues that his hearing was unfair because Judge Bone did not rule on the issues of intent and whether the evidence presented by the Administrator was sufficient, Petitioner was denied the right to confront his accusers and Petitioner was convicted by a biased decision maker. (*See, Petition*, pp. 21-25, 27-29).

Petitioner does not argue that he was denied adequate notice of the charges against him. Petitioner's other arguments are without merit as discussed below. Petitioner was afforded all required procedural due process guarantees.

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[15] *continued*

an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. The defendant is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

(Amended March 9, 1987, eff. August 1, 1987). The procedure followed in Petitioner's prosecution mirrored the requirements set forth in this rule.

1. Notice of charge.

Petitioner does not dispute that he was given adequate notice of the charges pending against him. The record reveals that from the initiation of these proceedings, Petitioner has been given adequate notice.

The Commission's initial petition seeking contempt and the Supreme Court of Illinois' rule to show cause both notified Petitioner that he was being charged with indirect criminal contempt of court. (*Stip.*, pars. 31, 33). Prior to hearing, the Commission provided Petitioner with a detailed specification of the factual allegations pending against him. (Appendix B). The Administrator agreed on behalf of the Commission to limit his evidence to that outlined in the specification. (Bone trans., 6/21/90, pp. 30-31). Finally, the Administrator notified Petitioner that the Commission was not going to request a sanction of incarceration for more than six months and a fine not exceeding $500 if Petitioner was convicted.[16] (Bone trans., 6/21/90, p. 21).

2. Opportunity to defend.

Petitioner argues that he was denied due process because Judge Bone did not rule on his constitutional arguments. In addition, Petitioner argues that the Supreme Court of Illinois did not provide him an opportunity to brief these issues. Petitioner's arguments are without merit. Petitioner was afforded an opportunity and did present his State and Federal Constitutional claims to the Supreme Court of Illinois. The Court expressly ruled on these claims. No hearing was required.

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[16] The significance of this notification was that Petitioner was not entitled to a trial by jury if the Commission sought a sanction limited to six months incarceration and a $500 fine. (*County of McLean v. Kickapoo Creek, Inc.*, 51 Ill.2d 353, 838 N.E.2d 720 (1972)). (*See also, Bloom v. Illinois*, 391 U.S. 194 (1967)).

The Supreme Court of Illinois in its rule to show cause directed to Petitioner, ordered him to set forth, in writing, why he should not be held in indirect criminal contempt of the Court. (*Stip.*, par. 16). In response, Petitioner filed both an original and amended answer wherein he set forth all of his State and Federal Constitutional claims, as well as state law arguments. (*Stip.*, par. 18). The Court in its order sentencing Petitioner considered the arguments made and found them to be without merit. (Pet.'s Appendix B, p. B2). The Court did not abuse its discretion in not affording Petitioner an opportunity to orally argue or further brief these issues. Petitioner's position was adequately set forth in his answers. Therefore, no oral argument or further briefing was required.[17] (*See, People v. Colorado City Lot Owners and Taxpayers Association*, 119 Ill. App.3d 691, 700, 456 N.E.2d 943, 950 (Ill. App. 1 Dist. 1983) (*reversed on other grounds*, 106 Ill.2d 1, 476 N.E.2d 409 (1985)).

Petitioner's argument that he was denied due process because he was not afforded an appeal is also without merit. The Supreme Court of Illinois has the inherent authority to prosecute as contempt the unauthorized practice of law. This authority is judicial and is not susceptible to modification by the legislature. (*See, People's Stock Yards State Bank*, 344 Ill. at 470-473, 176 N.E. at 905-906). Therefore, the right to an appeal is not required.[18]

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[17] The Supreme Court of Illinois also did not abuse its authority by remanding the matter to Judge Bone for an evidentiary hearing limited to issues of fact. In the prosecution of contempt for the unauthorized practice of law, the Court has historically referred these matters to a trial court or other lawful forum for findings of fact. (*See, People v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901 (1931), *People v. Schafer*, 404 Ill. 45, 87 N.E. 773 (1949), and *People v. Barasch*, 21 Ill.2d 407, 173 N.E.2d 417 (1961)).

[18] Regardless, Petitioner does have a right to appeal the Illinois Supreme Court's decision to this Court pursuant to 28 U.S.C. Sec-

(Footnote continued on following page)

3. Fair hearing.

Petitioner alleges that his right to due process was violated because he was denied a fair hearing on the issue of intent, he was not allowed to challenge the sufficiency of the evidence presented against him at hearing by way of a motion for directed finding, he was denied his right to confront his accusers and he was convicted by a biased tribunal. Each of these arguments is without merit as argued below.

Petitioner's position is correct in that intent is an element of indirect criminal contempt which must be proven.[19] (*People v. Roush*, 101 Ill.2d 355, 364, 462 N.E.2d 468, 472 (1984)). Intent does not have to be proven by direct evidence. "The intent may be inferred from proof of the surrounding circumstances and from the character of the defendant." (*People ex rel. Kunce v. Hogan*, 67 Ill.2d 55, 61, 364 N.E.2d 50, 52 (1977)).

The circumstances in this situation clearly show that Petitioner intentionally practiced law after he was notified that his name was removed from the Master Roll of Attorneys. Petitioner has not challenged the fact that he was practicing law when he attempted to close the estate.[20]

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[18] *continued*
tion 1257(a). This Court may review the facts and law concerning Petitioner's conviction through its process of review on writ of certiorari. (*See*, U.S.S.C.R. 10 *et seq.*).

[19] The standard of proof in a prosecution for indirect criminal contempt is beyond a reasonable doubt. *People v. Ziporyn*, 121 Ill. App.3d 1051, 1055, 460 N.E.2d 385, 388 (Ill. App. 1 Dist. (1984)) (*reversed on other grounds*, 106 Ill.2d 419, 478 N.E.2d 364 (1985)). Judge Bone and the Supreme Court of Illinois used a reasonable doubt standard during the course of these proceedings. (Pet.'s Appendix A, p. A1; Pet.'s Appendix F, p. F3).

[20] Concerning the definition of the practice of law:

> The courts are in accord on the proposition that where one appears in a court representing one of the parties to the litiga-

(Footnote continued on following page)

Therefore, Petitioner was in willful contempt of the authority of the Supreme Court of Illinois.

Petitioner's argument that he was denied due process because Judge Bone did not allow him to challenge the sufficiency of the evidence is without merit. The Supreme Court of Illinois was well within its authority limiting Judge Bone to making findings of fact. (*See*, footnote 17, *supra*).

Petitioner's argument that he was denied due process because he was not allowed to confront his true accusers is again without merit. Petitioner was granted the opportunity through counsel to cross-examine every witness presented by the Commission. (*See*, Bone trans., 8/6/90 and 9/21/90). Petitioner's argument that the Commission was his true accuser is illusory.[21]

Finally, Petitioner's argument that he was denied due process because he was convicted by a biased decision maker is without merit. The Supreme Court of Illinois did not abuse its discretion in hearing this case. Petitioner was not entitled to a change of venue.

The general rule is that a judge or court is not disqualified from conducting contempt proceedings merely because

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[20] *continued*
tion, counsels and advises with such a party in reference to his rights in the suit, selects the kind of pleading and drafts it, and assumes general control of the action in the court, he is engaged in the practice of law.

(*People v. Tinkoff*, 399 Ill. 282, 288, 77 N.E.2d 693, 696 (1948)). There is no question that Petitioner's efforts on behalf of Ms. Halbert constituted the practice of law.

[21] The Supreme Court of Illinois can properly appoint an agent as its prosecutor in a proceeding on a charge of contempt for the unauthorized practice of law. (*People v. Schafer*, 404 Ill. 45, 46, 87 N.E.2d 773, 774 (1949)). Petitioner cites no precedent which holds that he should be able to call his prosecutor as a witness during his trial for contempt. (*See, Petition*, pp. 24-25). Not one scintilla of evidence has been produced which indicates that any agent of the Commission would have knowledge of any fact in dispute in this proceeding.

the contempt was committed against the judge or a court of which he was a member. (*See*, Annot., 64 A.L.R.2d 600 (1959)). The standard to be applied is to look at the nature of the conduct and determine whether it would so inflame a judge that he could not remain impartial. If the conduct does not rise to an inflammatory level, there is no absolute prohibition against that judge or court from hearing the case. (*Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), *People v. Jashunsky*, 51 Ill.2d 220, 282 N.E.2d 1 (1972), and *In re Albert*, 383 Mich. 722, 179 N.W.2d 20 (1970)). In this case, there is no evidence which would indicate that the Supreme Court of Illinois was so inflamed as to prohibit it from hearing this case. In fact, the sanction imposed, a $200 fine, seems to indicate the contrary.

Petitioner's final argument that the Supreme Court of Illinois was merely protecting its own interests and acting as a judge in its own cause is also without merit. No evidence in the record suggests that the Court was doing anything but upholding its authority to regulate the practice of law in the State of Illinois. (*See, Cronson v. Clark, et al.*, 810 F.2d 662, 664 (7th Cir.) (*cert. denied*, 484 U.S. 871 (1987)).

CONCLUSION

For the foregoing reasons, respondent individual members of the Attorney Registration and Disciplinary Commission and the Commission, pray that the Court enter an order denying Petitioner's *Petition for Writ of Certiorari* filed in this cause.

Respectfully submitted,

WILLIAM F. MORAN, III
Counsel of Record

Attorney for Respondents Individual Members of the Attorney Registration and Disciplinary Commission and the Commission

APPENDICES

INDEX TO APPENDICES

APPENDIX A

IN THE
SUPREME COURT OF ILLINOIS

In the Matter of:	)	
	)	Supreme Court
Alfred H. Greening, Jr.,	)	No. M.R. 5916
	)	
Attorney-Respondent,	)	Administrator's
	)	No. 89-CH-425
No. 1051830.	)	

STIPULATION AS TO FACTS AND ADMISSIBILITY OF DOCUMENTS

John C. O'Malley, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, William F. Moran, III, and Respondent, by his attorney, LeGrand L. Malany, stipulate to the following facts and agree that the exhibits attached to this stipulation are true and correct copies of the documents they purport to be and are admissible without further foundation in this proceeding. Both the Administrator and Respondent reserve the right to argue the relevancy each of these facts and documents has to the issues presented in this proceeding. The Administrator agrees to limit his evidence of Respondent's conduct to the transactions set forth in the *Administrator's Specification of Factual Allegations* filed in this cause.

1. Attached as Exhibit 1 is a certified copy of the Supreme Court of Illinois' entire file in *In re Greening*, M.R. 5916, Administrator's No. 89-CH-425.

2. Attached as Exhibit 2 is a certified copy of the Circuit Court's entire file in the *Estate of William A. Halbert*, Case No. 88-P-97 in the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois.

3. Respondent was admitted to the practice of law in the State of Illinois on May 16, 1949.

4. On February 19, 1988 Respondent filed in the Circuit Court for the Seventh Judicial Circuit, Sangamon County, a *Petition for Letters of Administration* on behalf of Helen B. Halbert, the spouse and sole surviving heir of William A. Halbert. Mr. Halbert passed away on February 10, 1988. The Clerk of the Circuit Court docketed the matter as Case No. 88-P-97.

5. On February 19, 1988 the Court in Case No. 88-P-97 entered an order appointing Mrs. Halbert the independent administrator of her late husband's estate.

6. On or about December 22, 1988 Respondent received a notice from the Commission informing him that he was required to register and pay the 1989 annual registration fee in the amount of $140 to the Commission on or before February 1, 1989. Attached as Exhibit 3 is a copy of the notice.

7. Respondent neither registered nor paid the 1989 annual registration fee as required on or before February 1, 1989.

8. On or about February 20, 1989 Respondent received a notice from the Commission notifying him that his registration and the 1989 annual registration fee were past-due and that if he did not register and pay the fee on or before March 1, 1989, his name would be removed from the Master Roll of Attorneys. Attached as Exhibit 4 is a copy of the notice.

9. On March 1, 1989 Respondent's name was removed from the Master Roll of Attorneys for failure to register and pay the 1989 annual registration fee.

10. Respondent was not aware that his name had been removed from the Master Roll until on or about March 22, 1989 when he received a notice from the Commission informing him that his name had been removed. Attached as Exhibit 5 is a copy of the notice.

11. On or about May 2, 1989 the Commission received a letter from Respondent stating, "A recent Fourth district Appellate Court Case—No. 4-88-0355—informs me that I do not have to be registered with your office to practice law in the State of Illinois." Attached as Exhibit 6 is a copy of Respondent's letter.

12. On or about May 11, 1989 the Deputy Administrator of the Commission, Jerome Larkin, forwarded a letter to Judge John W. Russell, former Chief Judge of the Circuit Court for the Seventh Judicial Circuit of Illinois, informing Judge Russell that Respondent had been removed from the Master Roll of Attorneys as set forth in paragraph 9 above. A copy of this letter was forwarded to Judge Joseph C. Cavanaugh, who began serving as Chief Judge of the Seventh Judicial Circuit on December 5, 1988. Attached as Exhibit 7 is a copy of Mr. Larkin's letter.

13. On or about June 6, 1989 Respondent received a letter from Mr. Larkin informing him that he was not excused from registering or paying the 1989 annual registration fee and accrued penalties. Enclosed with the letter was a 1989 registration application. Attached as Exhibit 8 is a copy of Mr. Larkin's letter and the attachment described.

14. On or about June 12, 1989 the Commission received a letter from Respondent addressed to Mr. Larkin. The 1989 registration application as set forth in paragraph 13 above had been completed and was attached to the letter. Respondent did not forward to the Commission with his letter the 1989 annual registration fee and accrued penalties. Attached as Exhibit 9 is a copy of Respondent's letter and the attachment described.

15. On July 31, 1989 the Administrator of the Commission filed with the Supreme Court of Illinois an amended report pursuant to Supreme Court Rule 756 concerning Respondent's failure to pay the 1989 annual registration fee and accrued penalties. No specific conduct of Respondent was reported to the Court other than Respondent's failure to pay the 1989 annual registration fee and penalties with his registration. The amended report requested that the Court issue a rule to show cause why Respondent should not be suspended from the practice of law for his wilful failure to comply with Rule 756. Attached as Exhibit 10 is a copy of the amended report.

16. On August 7, 1989 the Supreme Court ruled Respondent to show cause in writing, on or before September 11, 1989, why he should not be suspended from the practice of law until further order of Court for failing to comply with the requirements of Supreme Court Rule 756. Attached as Exhibit 11 is a copy of the Court's order.

17. On August 18, 1989 a copy of the Rule to Show Cause as set forth in paragraph 16 above was personally served on Respondent at his office at 117 West Main Street, Williamsville, Illinois.

18. On September 11, 1989 Respondent filed with the Supreme Court an answer to the Rule to Show Cause as set forth in paragraph 16 above. The answer raised

ten conflicting provisions between Supreme Court Rule 756 and the Illinois Constitution of 1970, two statutory violations, violations of the Fifth and Fourteenth Amendments to the U.S. Constitution and that Rule 756 does not establish any procedure for reporting to the Court nor does it authorize the Commission to charge or seek suspension for the practice of law for the non-payment of a fee. An amendment to the Answer was filed with the Supreme Court on September 22, 1989 raising violations of Art. 1, Par. 2 of the Constitution of the State of Illinois and the Fourteenth Amendment to the United States Constitution. Respondent attached to his answer Cashier's Check No. 61463 drawn on the Williamsville State Bank dated September 11, 1989 in the amount of $230 made payable to the "Clerk of (the) Supreme Court of Illinois" for payment of the past-due 1989 annual registration fee and accrued penalties. Attached as Group Exhibit 12 are copies of Respondent's answer and amended answer.

19. On September 15, 1989 the Administrator filed his response to Respondent's answer as set forth in paragraph 18 above. The Administrator requested that the Supreme Court enter an order enforcing the Rule to Show Cause and suspend Respondent from the practice of law until such time as he complies with the provisions of Supreme Court Rule 756. Attached as Exhibit 13 is a copy of the Administrator's response.

20. On September 27, 1989 the Supreme Court entered an order directing the Clerk of the Court to return to Respondent the check for $230 as set in paragraph 18 above. The Court continued its Rule to Show Cause as set forth in paragraph 16 above, to and including October 4, 1989 to give Respondent the opportunity to make payment of the 1989 annual registration fee and accrued

penalties to the Commission. Attached as Exhibit 14 is a copy of the Court's order.

21. On October 3, 1989 Respondent placed the check as set forth in paragraph 18 above into an escrow account pursuant to a written agreement with the Lincoln Land Service Corporation subject only to the written direction of the Chief Justice of the Supreme Court of Illinois as the Constitutional Administrator of the Court.

22. On October 4, 1989 Respondent filed with the Supreme Court a copy of the Escrow Agreement concerning the arrangement as set forth in paragraph 21 above. Attached as Exhibit 15 is a copy of the escrow agreement.

23. On October 20, 1989 Respondent appeared at the office of the Clerk of the Circuit Court of Sangamon County, Probate Division, and gave to the Deputy Clerk, Rosemary M. Skadden, for inclusion in the court file in Case No. 88-P-97, a check payable to the Clerk of the Circuit Court in the amount of $39 drawn on the account of Helen B. Halbert, number 071100269 at the Marine Bank of Springfield, a final accounting, an Estate Closing Letter from the Internal Revenue Service and a "Certificate of Discharge and Determination of Tax" issued by the Illinois Attorney General. Attached as Exhibit 16 is a copy of Ms. Halbert's check. Attached as Exhibit 17 is a copy of the receipt issued by the Circuit Clerk's office evidencing the receipt of the $39 check from Respondent as set forth above. Attached as Exhibit 18 is a copy of the final accounting. Attached as Exhibit 19 is a copy of the estate closing letter as set forth above. Attached as Exhibit 20 is a copy of the "Certificate of Discharge and Determination of Tax" as set forth above.

24. On October 23, 1989 Judge Friedman entered a docket entry in Case No. 88 P 97 which stated:

> On October 20, 1989 Alfred H. Greening appeared to obtain an approval of a final accounting in this estate. The court informed him he was not allowed to practice before it until such time as he got his matter with the Attorney Registration and Disciplinary Commission straightened out.

25. On or about November 1, 1989 Respondent received a notice from the Commission informing him that he was required to register and pay to the Commission the 1990 annual registration fee on or before January 1, 1990 pursuant to the requirements of Supreme Court Rule 756(a). Attached as Exhibit 21 is a copy of the notice.

26. On or about December 27, 1989 the Commission received from Respondent his completed 1990 registration application and Cashier's Check No. 62356 drawn on the Williamsville State Bank dated December 27, 1989 in the amount of $140 made payable to the "Clerk of the Supreme Court of Illinois" for payment of the 1990 annual registration fee. Respondent indicated on the registration application that he had paid to the Supreme Court on September 11, 1989 the past-due 1989 annual registration fee and accrued penalties. Attached as Exhibit 22 is a copy of the registration application. Attached as Exhibit 23 is a copy of Respondent's check.

27. In prior years Respondent had remitted to the Commission with his annual registration statement, checks made payable to the "Supreme Court of Illinois" or the "Illinois Supreme Court", which checks were negotiated by the Commission.

28. On January 30, 1990 Deborah M. Kennedy, Senior Counsel for the Administrator, informed Respondent by letter that the Administrator had initiated his Investigation No. 89-CI-5186 concerning the same actions of Respondent with respect to the Estate of William A. Halbert which are the subject of this hearing before Judge

J. David Bone. Respondent answered Ms. Kennedy's initial inquiry by letters dated February 9, 1990, March 3, 1990 and March 17, 1990. Attached as Exhibit 24 is a true and correct copy of Administrator's Investigation No. 89-SI-5186.

29. On or about January 11, 1990 Respondent received a letter from Ms. Kennedy returning to him his check for $140 as set forth in paragraph 26 above. Ms. Kennedy informed Respondent that his check did not comply with the provisions of Supreme Court Rule 756(a) as the check was not payable to the Commission. Kennedy requested that Respondent remit a check in accordance with the Rule. Attached as Exhibit 25 is a copy of Ms. Kennedy's letter.

30. On February 7, 1990 Respondent placed the check as set forth in paragraph 26 above into an escrow account pursuant to a written agreement with the Land of Lincoln Service Corporation subject only to the direction of the Chief Justice of the Supreme Court of Illinois as the Constitutional Administrator for the Court.

31. On February 7, 1990 the Administrator filed with the Supreme Court his *Supplemental Report* alleging that Respondent had engaged in the unauthorized practice of law and requesting that Respondent be ruled to show cause why he should not be held in indirect criminal contempt of Court for failing to pay the annual registration fees for 1989 and 1990 and engaging in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys. Attached as Exhibit 26 is a copy of the supplemental report.

32. On February 8, 1990 Respondent filed with the Supreme Court a copy of the Escrow Agreement concerning the arrangement as set forth in paragraph 30 above. Attached as Exhibit 27 is a copy of the escrow agreement.

33. On March 26, 1990 the Supreme Court entered an order ruling Respondent to show cause in writing, on or before April 30, 1990, why he should not be held in indirect criminal contempt of Court for engaging in the unauthorized practice of law. Attached as Exhibit 28 is a copy of the Court's order.

34. On April 11, 1990 a copy of the Supreme Court's Rule to Show Cause as set forth in paragraph 33 above was personally served on Respondent at his office at 101 West Main Street, Williamsville, Illinois.

35. On April 30, 1990 Respondent filed his written answer to the Court's Rule to Show Cause as set forth in paragraph 33 above. Respondent's answer raised his arguments concerning the Court's lack of original jurisdiction, that the Respondent was both registered and paid, that Respondent had asked Judge Friedman on October 19, 1989 to review the file in this cause so that he could answer on October 20, 1989 whether Respondent could practice in his court on the basis of Respondent's claim that he was registered and paid, that Respondent's conduct did not constitute the practice of law, that not conforming to the payment procedures of a Supreme Court Rule is not a criminal offense, that neither the Administrator or the Commission are criminal prosecutors, that the normal disciplinary channels cannot be bypassed and reiterated Respondent's constitutional objections. No hearing has been held on Respondent's objections. Attached as Exhibit 29 is a copy of Respondent's answer.

36. On May 30, 1990 the Supreme Court entered an order continuing the Rule to Show Cause as set forth in paragraph 33 above and directing Respondent and a representative of the Commission to appear before Circuit Judge J. David Bone for the purpose of an evidentiary hearing in which only findings of fact should be made on

the issues formed by the supplemental report as set forth in paragraph 31 above and Respondent's answer as set forth in paragraph 35 above. Attached as Exhibit 30 is a copy of the Court's order.

37. Between March 1, 1989 and August 6, 1990 Respondent's name has not appeared on the Master Roll of Attorneys registered to practice law in the State of Illinois pursuant to Supreme Court Rule 756.

John C. O'Malley, Administrator
Attorney Registration and
Disciplinary Commission

By: WILLIAM F. MORAN/slb
Counsel for the Administrator

Alfred H. Greening, Jr., Respondent

By: LEGRAND MALANY
Counsel for Respondent

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APPENDIX B

IN THE
SUPREME COURT OF ILLINOIS

In the Matter of:	)	
	)	Supreme Court
Alfred H. Greening, Jr.,	)	No. M.R. 5916
	)	
Attorney-Respondent,	)	Administrator's
	)	No. 89-CH-425
No. 1051830.	)	

ADMINISTRATOR'S SPECIFICATIONS OF FACTUAL ALLEGATIONS

John C. O'Malley, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, William F. Moran, III, specifies the allegations he intends to prove beyond a reasonable doubt during the evidentiary hearing to be held in relation to this cause:

1. Respondent was admitted to the practice of law in the State of Illinois on May 16, 1949.

2. On February 19, 1988 Respondent filed in the Circuit Court for the Seventh Judicial Circuit, Sangamon County, a *Petition for Letters of Administration* on behalf of Helen B. Halbert, the spouse and sole surviving heir of William A. Halbert. Mr. Halbert passed away on February 10, 1988. The Clerk of the Circuit Court docketed the matter as Case No. 88 P 97.

3. On February 19, 1988 the Court in Case No. 88 P 97 entered an order appointing Mrs. Halbert the legal representative of her late husband's estate. At all times rele-

vant to this proceeding, Respondent remained attorney of record for Mrs. Halbert.

4. On December 22, 1988 the Commission Registrar caused to be forwarded to Respondent a notice informing him that he was required to register and pay the 1989 annual registration fee in the amount of $140 to the Commission on or before February 1, 1989.

5. Respondent neither registered nor paid the 1989 annual registration fee as required on or before February 1, 1989.

6. On February 20, 1989 the Commission Registrar caused to be forwarded to Respondent a final notice notifying him that his registration and the 1989 annual registration fee were past-due and that if he did not register and pay the fee on or before March 1, 1989, his name would be removed from the Master Roll of Attorneys.

7. On March 1, 1989 Respondent's name was removed from the Master Roll of Attorneys for failure to register and pay the 1989 annual registration fee.

8. On March 22, 1989 the Commission Registrar caused to be forwarded to Respondent a notice informing him that he had been removed from the Master Roll of Attorneys as set forth in paragraph 7 above.

9. On or about May 2, 1989 Respondent forwarded a letter to the Commission stating in its entirety, "A recent Fourth District Appellate Court Case—No. 4-88-0355—informs me that I do not have to be registered with your office to practice law in the State of Illinois."

10. On or about May 11, 1989 the Deputy Administrator of the Commission, Jerome Larkin, forwarded a letter to Judge John W. Russell, former Chief Judge of the Circuit Court for the Seventh Judicial Circuit of Illinois,

informing Judge Russell that Respondent had been removed from the Master Roll of Attorneys as set forth in paragraph 7 above. A copy of this letter was forwarded to Judge Joseph C. Cavanaugh, who began serving as Chief Judge of the Seventh Judicial Circuit on December 5, 1988.

11. On or about June 6, 1989 Mr. Larkin forwarded a letter to Respondent informing him that he was not excused from registering or paying the 1989 annual registration fee and accrued penalties. Enclosed with the letter was a 1989 registration application.

12. On or about June 12, 1989 Respondent forwarded a letter to Mr. Larkin. The 1989 registration application as set forth in paragraph 11 above had been completed and was attached to the letter. Respondent did not forward the 1989 annual registration fee and accrued penalties.

13. On July 31, 1989 the Administrator of the Commission filed with the Supreme court of Illinois an amended report pursuant to Supreme Court Rule 756 concerning Respondent's failure to pay the 1989 annual registration fee and accrued panalties. The amended report requested that the Court issue a rule to show cause why Respondent should not be suspended from the practice of law for his wilful failure to comply with Rule 756.

14. On August 7, 1989 the Supreme Court ruled Respondent to show cause in writing, on or before September 11, 1989, why he should not be suspended from the practice of law until further order of Court for failing to comply with the requirements of Supreme Court Rule 756.

15. On or about August 9, 1989 Respondent telephoned Chief Judge Cavanaugh concerning his status as an attorney registered to practice law in Illinois. Judge Cavanaugh

advised Respondent that he would not be allowed to practice law in the Circuit Court of the Seventh Judicial Circuit of Illinois until he had paid the 1989 annual registration fee and accrued penalties to the Commission as required by Supreme Court Rule 756.

16. On August 18, 1989 a copy of the Rule to Show Cause as set forth in paragraph 14 above was personally served on Respondent at his office at 117 West Main Street, Williamsville, Illinois.

17. On September 11, 1989 Respondent filed with the Supreme Court an answer to the Rule to Show Cause as set forth in paragraph 14 above. Respondent attached to his answer Cashier's check No. 61463 drawn on the Williamsville State Bank dated September 11, 1989 in the amount of $230 made payable to the "Clerk of (the) Supreme Court of Illinois" in purported payment of the past-due 1989 annual registration fee and accrued penalties.

18. On September 15, 1989 the Administrator filed his response to Respondent's answer as set forth in paragraph 17 above. The Administrator requested that the Supreme Court enter an order enforcing the Rule to Show Cause and suspend Respondent from the practice of law until such time as he complies with the provisions of Supreme Court Rule 756.

19. On September 27, 1989 the Supreme Court entered an order directing the Clerk of the Court to return to Respondent the check for $230 as set in paragraph 17 above. The Court continued its Rule to Show Cause to and including October 4, 1989 to give Respondent the opportunity to make payment of the 1989 annual registration fee and accrued penalties to the Commission.

20. On October 3, 1989 Respondent unilaterally placed the check as set forth in paragraph 17 above into an es-

crow account with the Lincoln Land Service Corporation subject to a written escrow agreement which provided that the funds would only be distributed at the direction of the Chief Justice of the Supreme Court of Illinois.

21. On October 4, 1989 Respondent filed with the Supreme Court a copy of the Escrow Agreement concerning the arrangement as set forth in paragraph 20 above.

22. On October 20, 1989 Respondent appeared at the office of the Clerk of the Circuit Court of Sangamon County, Probate Division, and paid a court fee in the amount of $39 to Rosemary M. Skadden, an employee of the Clerk's office, in relation to Case No. 88 P 97. Respondent also filed in Case No. 88 P 97 a final accounting, an Estate Closing Letter from the Internal Revenue Service and a Certificate of Discharge and Determination of Tax issued by the Illinois Attorney General.

23. On October 20, 1989 Respondent appeared before Sangamon County Circuit Judge Simon L. Friedman in relation to Case No. 88 P 97. Respondent appeared to obtain approval of the final accounting as set forth in paragraph 22 above. Judge Friedman would not approve the accounting.

24. On October 23, 1989 Judge Friedman entered a docket entry in Case No. 88 P 97 which stated:

> On October 20, 1989 Alfred H. Greening appeared to obtain an approval of a final accounting in this estate. The court informed him he was not allowed to practice before it until such time as he got his matter with the Attorney Registration and Disciplinary Commission straightened out.

25. On or about October 20, 1989, after his appearance before Judge Friedman, Respondent met with Beth A. Wilke, an attorney licensed to practice law in Illinois.

Respondent told Ms. Wilke that Judge Friedman had not allowed him to appear to obtain approval of the final accounting he had filed in Case No. 88 P 97. Respondent told Wilke that the Executor of the Estate, Mrs. Halbert, was out of town.

26. During the meeting as set forth in paragraph 25 above, Respondent gave Ms. Wilke copies of the final accounting, Estate Tax Closing Letter and Certificate of Discharge and Determination of Tax he had filed in Case No. 88 P 97. Respondent requested that Wilke review these documents and do whatever was required to close this estate.

27. On October 27, 1989 Ms. Wilke appeared before Judge Friedman in Case No. 88 P 97. Judge Friedman approved the final accounting set forth above. At that time Wilke presented an *Order of Discharge* which she had drafted. Judge Friedman signed the order and Mrs. Halbert was discharged as Executor of the Estate.

28. On November 11, 1989 the Commission Registrar caused to be forwarded to Respondent a notice informing him that he was required to register and pay to the Commission the 1990 annual registration fee on or before January 1, 1990 pursuant to the requirements of Supreme Court Rule 756(a). In addition, Respondent was notified that the 1989 annual registration fee and accrued penalties were still outstanding.

29. On or about December 27, 1989 Respondent forwarded to the Commission his completed 1990 registration application and Cashier's Check No. 62356 drawn on the Williamsville State Bank dated December 27, 1989 in the amount of $140 made payable to the "Clerk of the Supreme Court of Illinois" in purported payment of the 1990 annual registration fee. Respondent indicated on the

registration application that he had paid to the Supreme Court on September 11, 1989 the past-due 1989 annual registration fee and accrued penalties.

30. On January 22, 1990 the Commission Registrar caused to be forwarded to Respondent a final notice notifying him that the 1990 annual registration fee was past-due, as well as the 1989 annual registration fee and accrued penalties. The notice informed Respondent that his name was still removed from the Master Roll of Attorneys as set forth in paragraph 7 above.

31. On January 31, 1990 Deborah M. Kennedy, Senior Counsel for the Administrator, caused a letter to be sent to Respondent returning to him his check for $140 as set forth in paragraph 29 above. Ms. Kennedy informed Respondent that his check did not comply with the provisions of Supreme Court Rule 756(a) as the check was not payable to the Commission. Kennedy requested that Respondent remit a check in accordance with the Rule.

32. On February 7, 1990 Respondent unilaterally placed the check as set forth in paragraph 29 above into an escrow account with the Land of Lincoln Service Corporation subject to a written escrow agreement which provided that the funds would only be distributed at the direction of the Chief Justice of the Supreme Court of Illinois.

33. On February 7, 1990 the Administrator filed his *Supplemental Report* with the Supreme Court alleging that Respondent had engaged in the unauthorized practice of law and requesting that Respondent be ruled to show cause why he should not be held in indirect criminal contempt of Court for failing to pay the annual registration fees for 1989 and 1990 and engaging in the unauthor-

ized practice of law after his name was removed from the Master Roll of Attorneys.

34. On February 8, 1990 Respondent filed with the Supreme Court a copy of the Escrow Agreement concerning the arrangement as set forth in paragraph 32 above.

35. On March 26, 1990 the Supreme Court entered an order ruling Respondent to show cause in writing, on or before July 30, 1990, why he should not be held in indirect criminal contempt of Court for engaging in the unauthorized practice of law.

36. On April 11, 1990 a copy of the Supreme Court's Rule to Show Cause as set forth in paragraph 35 above was personally served on Respondent at his office at 101 West Main Street, Williamsville, Illinois.

37. On April 30, 1990 Respondent filed his written answer to the Court's Rule to Show Cause as set forth in paragraph 35 above.

38. On May 30, 1990 the Supreme Court entered an order continuing the Rule to Show Cause as set forth in paragraph 35 above and directing Respondent and a representative of the Commission to appear before Circuit Judge J. David Bone for the purpose of an evidentiary hearing in which only findings of fact should be made on the issues formed by the supplemental report as set forth in paragraph 34 above and Respondent's answer as set forth in paragraph 37 above.

39. As of the date of this pleading, Respondent's name does not appear on the Master Roll of Attorneys due to his failure to pay the 1989 and 1990 annual registration fees and accrued penalties to the Commission.

John C. O'Malley, Administrator
Attorney Registration and
Disciplinary Commission

By: WILLIAM F. MORAN, III
Counsel for the Administrator

William F. Moran, III
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No. 91-490

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

ALFRED H. GREENING, JR.,

Petitioner,

vs.

HONORABLE BEN MILLER, Chief Justice, Illinois Supreme Court, et al.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

PETITIONER'S REPLY IN OPPOSITION TO THE BRIEF OF THE RESPONDENT JUSTICES OF THE SUPREME COURT OF ILLINOIS

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PETITIONER'S REPLY IN OPPOSITION TO THE BRIEF OF THE RESPONDENT JUSTICES OF THE SUPREME COURT OF ILLINOIS

REPLY OF PETITIONER GREENING

The Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) was created by the Court; it functions solely as agent of the Court (*Atty. Reg. & Discpl. Comm. v. Harris*, 595 F.Supp. 107 (1984)); it is funded and administered by rule of the Court; and it carries out a government function (*Hoover v. Ronwin*, 466 U.S. 588 (1984)) which can not be delegated to anyone

not a part of the Court (*In Re Loss*, 119 Ill.2d 186 (1987)). It is an administrative unit of the Court (1982, Ill. Atty. Gen. Op. 57 (No. 82-022)). In this case, the Court directed the ARDC (Bone Tran., 9/21/90, p. 4, l. 21 thru p. 6, l. 16) and the hearing judge (Bone Tran., 6/21/90, p. 25, l. 6-17; p. 19, l. 10-19; p. 17, l. 12-17). Without the Supreme Court's direct participation, the proceedings could not have occurred because this case was not a disciplinary case and there were no rules.

There were separate and well defined procedures for disciplinary cases which were not used here. The ARDC did not function in the role prescribed for it in disciplinary matters. The ARDC acted as the Court's enforcement agent to protect the Court's claim of "inherent" power and at the behest of the Court. Since the ARDC was acting outside its prescribed role, it had no authority to act other than by direction of the Court. The ARDC petitioned the Court for the show cause orders. As the record shows, the ARDC first asked that Greening be held in contempt. By direction of the Court, that request was amended to show cause why Greening should not be suspended (an enforcement procedure which is not specified for failure to pay under Rule 756). The suspension proceeding was later ignored and an indirect criminal contempt proceeding instituted in its place.

Prior to any proceedings, Judge Bone noted that there were no rules of procedure for the proceedings in MR 5916 or for the proceedings which were to take place before him (letter memorandum dated 6/12/90, adopted 6/15/90). Judge Bone reiterated this fact by stating:

> "I make these preliminary statements because that is about all I have to guide me, as I am unaware of any rules that are applicable to these proceedings and I have no prior experience in these proceedings." (Bone Tran., 6/21/90, p. 4, l. 6-9)

This is a case of criminal contempt alleged against the Court as the party in interest. Contrary to Respondent's averment, the ARDC throughout the proceedings maintained that it was not a party. The ARDC stated that:

> "The Supreme Court * * * has original jurisdiction and the inherent authority to proceed. The Court can delegate certain functions to the [Bone] Court, as they have in this case, and to the Administrator * * * the Administrator [ARDC] is not a party. We are not a prosecutor. [Bone Trans., 6/21/90 p. 13, l. 15-24] The Administrator [ARDC] was appointed to be here by the Supreme Court as the relator and, as the matter is a matter of contempt before the Supreme Court they really have the inherent jurisdiction to act * * * so while not a party as we traditionally speak of a party the Supreme Court is truly the entity whose dignity has been violated * * *." [Bone Trans., 8/6/91 p. 5, l. 21-24; p. 6, l. 1-3]

Therefore, Respondent's reference to rules and the alignment of parties is not correct.

The Supreme Court was *the* final adjudicator but it did not act as *a* final adjudicator. The Supreme Court was a court of both trial jurisdiction and review. The entire proceeding was in the Supreme Court. There was no independent reviewer. Even proceedings before Judge Bone were admitted to be Supreme Court proceedings as stated in the record:

> "The proceedings in this matter [before Judge Bone] are proceedings in the Supreme Court and not the Circuit Court. All documents will be captioned * * * in the Supreme Court * * *. All motions and documents will be filed with the Clerk of the Supreme Court * * *." (Letter Mem. of June 12, 1990 adopted by Judge Bone June 15, 1990)

Designating the Respondents by listing the justices individually or referring to them collectively as the Illinois

Supreme Court is a legal equivalency. However, listing the justices individually preserves any distinct, special, constitutional roles. Here, the chief justice is the supreme administrator for the Court (Ill. Const. Art. VI, Sec. 16) and as such has the sole, final authority to administer the Court's direction over the ARDC. The chief justice cannot escape responsibility for the constitutional rights denied Greening before or after the Bone hearing directed by the Court. From that superior executive role he cannot recuse. Both Justice Moran and Justice Miller were chief justices during the proceeding to which Greening was subject.

Respondent references the Federal District Court proceedings of *Greening v. Moran* and the current appeal in the Seventh Circuit. The Federal Court proceedings are to protect Federal due process rights regarding, among other things, the failure of the Illinois Supreme Court to provide a State forum to address State constitutional issues. The instant issue is an appeal from a criminal conviction, an issue which was not before the Federal District and Appellate Courts. It should be noted, however, that the Illinois Supreme Court has used the existence of the multiple forums to hide the true nature of its conduct by stating in each forum that the other forum is protecting Greening's rights thereby demanding that each forum abstain. It uses this process as a mechanism to confuse and to preclude adjudication of issues which the Supreme Court does not want adjudicated.

Respectfully submitted,

LEGRAND L. MALANY
Counsel of Record
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Attorney for Petitioner